

1 Timothy P. Fox (CA Bar 157750)
tfox@creeclaw.org
2 Elizabeth Jordan*
ejordan@creeclaw.org
3 CIVIL RIGHTS EDUCATION AND
4 ENFORCEMENT CENTER
104 Broadway, Suite 400
5 Denver, CO 80203
6 Tel: (303) 757-7901
Fax: (303) 872-9072

7 Stuart Seaborn (CA Bar 198590)
sseaborn@dralegal.org
8 Melissa Riess (CA Bar 295959)
mriess@dralegal.org
9 Monica Porter (CA Bar 311974)
mporter@dralegal.org
10 Jessica Agatstein (CA Bar 319817)
jagatstein@dralegal.org
11 DISABILITY RIGHTS ADVOCATES
2001 Center Street, 4th Floor
12 Berkeley, California 94704
13 Tel: (510) 665-8644
14 Fax: (510) 665-8511

15 William F. Alderman (CA Bar 47381)
walderman@orrick.com
16 Jake Routhier (CA Bar 324452)
jrouthier@orrick.com
17 ORRICK, HERRINGTON &
18 SUTCLIFFE LLP
405 Howard Street
19 San Francisco, CA 94105
20 Tel: (415) 773-5700
21 Fax: (415) 773-5759

Lisa Graybill*
lisa.graybill@splcenter.org
Jared Davidson*
jared.davidson@splcenter.org
Jeremy Jong*
jeremy.jong@splcenter.org
SOUTHERN POVERTY LAW
CENTER
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Tel: (504) 486-8982
Fax: (504) 486-8947

Elissa Johnson*
elissa.johnson@splcenter.org
SOUTHERN POVERTY LAW
CENTER
150 E. Ponce de Leon Ave., Ste. 340
Decatur, GA 30030
Tel: (404) 521-6700
Fax: (404) 221-5857

22 Attorneys for Plaintiffs (continued on next page)

23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**
25 **EASTERN DIVISION – RIVERSIDE**

26 FAOUR ABDALLAH FRAIHAT;
27 MARCO MONTOYA AMAYA;
28 RAUL ALCOCER CHAVEZ; JOSE
SEGOVIA BENITEZ; HAMIDA ALI;
MELVIN MURILLO HERNANDEZ;
JIMMY SUDNEY; JOSÉ BACA

Case No. 19-cv-01546

CLASS ACTION

**Complaint for Declaratory and
Injunctive Relief for Violations of the
Due Process Clause of the Fifth**

1 HERNÁNDEZ; EDILBERTO
2 GARCÍA GUERRERO; MARTIN
3 MUÑOZ; LUIS MANUEL
4 RODRIGUEZ DELGADILLO;
5 RUBEN DARÍO MENCÍAS SOTO;
6 ALEX HERNANDEZ;
7 ARISTOTELES SANCHEZ
8 MARTINEZ; and SERGIO SALAZAR
9 ARTAGA; on behalf of themselves and
10 all those similarly situated; INLAND
11 COALITION FOR IMMIGRANT
12 JUSTICE, an organization; and AL
13 OTRO LADO, an organization,

14
15 Plaintiffs,

16
17 v.

18 U.S. IMMIGRATION AND
19 CUSTOMS ENFORCEMENT;
20 U.S. DEPARTMENT OF
21 HOMELAND SECURITY;
22 KEVIN MCALEENAN, in his official
23 capacity as Acting Secretary, U.S.
24 Department of Homeland Security;
25 MATTHEW T. ALBENCE, in his
26 official capacity as Acting Director,
27 U.S. Immigration and Customs
28 Enforcement;
DEREK N. BRENNER, in his official
capacity as Deputy Director, U.S.
Immigration and Customs
Enforcement; TIMOTHY S.
ROBBINS, in his official capacity as
Acting Executive Associate Director,
Enforcement and Removal Operations;
TAE JOHNSON, in his official
capacity as Assistant Director of
Custody Management, Enforcement
and Removal Operations; STEWART
D. SMITH, in his official capacity as
Assistant Director, Immigration and

**Amendment and Section 504 of the
Rehabilitation Act, 29 U.S.C. § 794,
et. seq.**

1 Customs Enforcement Health Service
2 Corps; JACKI BECKER KLOPP, in
3 her official capacity as Assistant
4 Director of Operations Support,
5 Enforcement and Removal Operations;
6 and DAVID P. PEKOSKE, in his
7 official capacity as Senior Official
8 Performing Duties of the Deputy
9 Secretary, Department of Homeland
10 Security,

11 Defendants.

12 Mark Mermelstein (CA Bar 208005)
13 *mmermelstein@orrick.com*
14 ORRICK, HERRINGTON & SUTCLIFFE LLP
15 777 South Figueroa Street, Suite 3200
16 Los Angeles, CA 90017
17 Tel: (213) 629-2020
18 Fax: (213) 612-2499

19 Christina Brandt-Young*
20 *cbrandt-young@dralegal.org*
21 DISABILITY RIGHTS ADVOCATES
22 655 Third Avenue, 14th Floor
23 New York, NY 10017
24 Tel: (212) 644-8644
25 Fax: (212) 644-8636

26 Maia Fleischman*
27 *maia.fleischman@splcenter.org*
28 SOUTHERN POVERTY LAW CENTER
4700 Biscayne Blvd., Ste 760
Miami, FL 33137
Tel: (305) 537-0589
Fax: (786) 237-2949

Attorneys for Plaintiffs (continued from previous page)

*Pro Hac Vice Application Forthcoming

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GLOSSARY OF TERMS

A

ACA	American Correctional Association
ADA	Americans with Disabilities Act
Adelanto	Adelanto ICE Processing Center (CA)
AFOD	ICE Assistant Field Office Director
AIC	American Immigration Council
AILA	American Immigration Lawyers Association
Albany County	Albany County Correctional Facility (NY)
Alexandria	Alexandria Staging Facility (LA)
ASL	American Sign Language
Aurora	Aurora ICE Processing Center (CO)

B

Berks County	Berks County Jail (PA)
BOP	Bureau of Prisons
Brooks County	Brooks County Detention Center (TX)

C

CCS	Correct Care Solutions (now Wellpath)
CMD	ICE Custody Management Division
Corizon	Corizon Correctional Healthcare
CORs	Contracting Officer's Representatives
CPR	Cardiopulmonary Resuscitation
CRCL:	Office of Civil Rights and Civil Liberties

D

DACA	Deferred Action for Childhood Arrivals
DDR	Detainee Death Review
Detention Facilities	Facilities that hold ICE detainees for more than 72 hours
DHS	Department of Homeland Security
DMC	Detention Monitoring Council
Dodge County	Dodge County Detention Center (WI)
DOJ	Department of Justice
DRC	Disability Rights California
DSMs	Detention Service Monitors
DWN	Detention Watch Network

E

EKG	Electrocardiogram
El Centro	El Centro Service Processing Center (CA)
El Paso	El Paso Processing Center (TX)
Elizabeth	Elizabeth Detention Center (NJ)
Eloy	Eloy Detention Center (AZ)
EMS	Emergency Medical Services
ERO	Enforcement and Removal Operations
Essex	Essex County Correctional Facility (NJ)
Etowah	Etowah County Detention Center (AL)

F

Farmville	Immigration Centers of America—Farmville (VA)
Florence	Florence Correctional Center (AZ)
Folkston	Folkston ICE Processing Center (GA)

G

GAO	Governmental Accountability Office
GEO	The GEO Group Inc.

H

Hall County	Hall County Detention Center (GA)
Hall	Hall County Jail (NE)
HSA	Health Services Administrator
Henderson	Henderson County Jail (NV)
HIV	Human Immunodeficiency Virus
Houston	Houston Contract Detention Center (TX)
HRW	Human Rights Watch
HSA	Health Services Administrator
Hudson County	Hudson County Correctional Facility
Hutto	T. Don Hutto Residential Center (TX)

I

ICE	Immigration and Customs Enforcement
ICIJ	Inland Coalition for Immigrant Justice
IGSA	Intergovernmental Service Agreement
IHSC	ICE Health Service Corps
Imperial	Imperial Detention Facility (CA)
Inspection Worksheet	Detention Inspection Form Worksheet
Irwin	Irwin County Detention Center (GA)

J

Joe Corley

Joe Corley Detention Center (TX)

K

Krome

Krome Service Processing Center (FL)

L

LaSalle

LaSalle ICE Processing Center (LA)

LVN

Licensed Vocational Nurse

M

Mesa Verde

Mesa Verde ICE Processing Center (CA)

MRI

Magnetic Resonance Imaging

N

Nakamoto

The Nakamoto Group Inc.

NIJC

National Immigrant Justice Center

O

OAM

ICE Office of Acquisitions Management

ODO

ICE Office of Detention Oversight

OIG

DHS Office of the Inspector General

Orange County

Orange County Jail (CA)

Otay Mesa

Otay Mesa Detention Center (CA)

Otero County

Otero County Processing Center (TX)

P

Pahrump

Pahrump Detention Center (NV)

PBNDS

Performance Based National Detention Standards

Port Isabel

Port Isabel Detention Center (TX)

PTSD

Post-Traumatic Stress Disorder

R

Rio Grande

Rio Grande Detention Center (TX)

River

River Correctional Center (LA)

Riverside

Riverside County Jail (CA)

RN

Registered Nurse

Rolling Plains

Rolling Plains Correctional Facility (TX)

S

Salt Lake	Salt Lake County Jail (UT)
San Bernardino County	San Bernardino County Detention Center (CA)
San Diego County	San Diego County Detention Facility (CA)
San Luis	San Luis Regional Detention Center (AZ)
San Pedro	San Pedro ICE Processing Center (CA)
Section 504	Section 504 of the Rehabilitation Act
SMRS	ICE'S Online Case Management System
South Texas/Pearsall	South Texas Detention Complex (TX)
Stewart	Stewart Detention Center (GA)

T

Tallahatchie	Tallahatchie County Correctional Facility (MS)
Teller	Teller County Jail (CO)
Theo Lacy	Theo Lacy Facility (CA)
TTY	Teletypewriter

U

Utah County	Utah County Jail (UT)
-------------	-----------------------

V

Victorville	Victorville Federal Correctional Complex (CA)
-------------	---

Y

York County	York County Detention Center
Yuba	Yuba County Jail (CA)

INTRODUCTION

1
2
3 1. Named Plaintiffs are men and women currently in the custody of
4 Immigration and Customs Enforcement (“ICE”), a component of the United States
5 Department of Homeland Security (“DHS”). On a daily basis, Plaintiffs and the
6 record number¹ of immigrants currently in ICE custody are subjected to horrific,
7 inhumane, punitive, and unlawful conditions of confinement. These human
8 beings—many of whom have fled torture—are packed into immigration prisons in
9 which they are denied healthcare; refused disability accommodations; and subjected
10 to arbitrary and punitive isolation, a practice that is increasingly considered torture.
11 Although ICE detains individuals in a patchwork—and currently ballooning—
12 system of private prisons, county jails, and directly operated facilities, the
13 inhumane and punitive conditions described herein are startlingly similar across the
14 entire system. Far from coincidental, the commonality of these brutal conditions
15 stems directly from ICE’s centralized policies, practices, and failures of meaningful
16 oversight. The consequent risk of harm to detained individuals is substantial,
17 irreparable, and ongoing. Dozens have unnecessarily died as a result of insufficient
18 care. Countless more have endured needless suffering from delays in medical care,
19 refusals to accommodate disabilities, and nearly constant isolation. Conditions in
20 detention are so brutal that many people are forced to abandon viable claims for
21 immigration relief and accept deportation out of a desperate desire to escape the
22 torture they are enduring in detention on U.S. soil.

23 2. Plaintiffs have a range of serious medical and mental health conditions
24 including diabetes, cerebral palsy, chronic pain, hypertension, bipolar disorder, and
25 schizophrenia. Plaintiffs have experienced the outright denial of care, delayed care,
26 and substandard and insufficient care. For example, Plaintiff Alex Hernandez, who

27 ¹ Isabela Dias, *ICE Is Detaining More People Than Ever—and for Longer*, Pacific
28 Standard (Aug. 1, 2019), <https://psmag.com/news/ice-is-detaining-more-people-than-ever-and-for-longer>.

1 has a torn rotator cuff, has been recommended for surgery by three separate
2 orthopedic specialists at three different facilities, but ICE has yet to provide the
3 surgery. Plaintiffs Martín Muñoz and Aristoteles Sanchez Martinez have diabetes
4 and were denied their daily dosages of insulin on multiple occasions. Plaintiff
5 Marco Montoya Amaya has a likely brain parasite but has not received any
6 treatment for over a year, despite risk of serious complications like seizures,
7 meningitis, and hydrocephalus.

8 3. Plaintiffs have also been subjected to arbitrary and unnecessary
9 segregation. For example, Plaintiff Hamida Ali has schizophrenia, depression, and
10 suicidal ideation. Although it is well known that prolonged isolation can both cause
11 and exacerbate depression and suicidality, Ms. Ali spent approximately nine
12 months in near-total isolation without even a guard adequately monitoring her
13 wellbeing. Plaintiff Jose Segovia Benitez likewise has been subjected to isolation,
14 notwithstanding the fact that it can exacerbate his depression and post-traumatic
15 stress disorder (“PTSD”).

16 4. Plaintiffs with disabilities have been denied appropriate
17 accommodations. For example, Plaintiff Raul Alcocer Chavez, who is Deaf, has
18 been denied an American Sign Language (“ASL”) interpreter in detention, which
19 has prevented him from receiving effective communication with medical staff and
20 his lawyer. Plaintiff Sergio Salazar Artaga, who has cerebral palsy and extreme
21 difficulty walking without falling, has been denied leg braces and delayed access to
22 a shower chair. Plaintiff Faour Abdallah Fraihat has knee and back pain and a disc
23 problem in his lower back that cause his legs to become numb when he tries to
24 walk more than ten to fifteen feet. He was denied a wheelchair for over two years
25 after staff took it away from him a month into being detained.

26 5. Defendants have the legal obligation to ensure that individuals in
27 immigration detention receive adequate care and accommodations. Defendants also
28 have the legal authority to release a substantial number of detained individuals on

1 their own recognizance, with bonds, or pursuant to other alternatives to detention,
 2 all of which have proven cost-effective and successful at assuring immigrants
 3 participate in their immigration proceedings. Defendants have nonetheless chosen
 4 to detain Plaintiffs and a record number of other immigrants, many for months and
 5 some for years. Some of these detained individuals are Lawful Permanent
 6 Residents, refugees, or longtime U.S. residents, while others have arrived more
 7 recently to seek asylum after fleeing persecution in their home countries. Though
 8 many asylum seekers risked their lives by traveling across continents to lawfully
 9 avail themselves of our nation's asylum laws and have violated no criminal laws,
 10 ICE chooses to detain them anyway.

11 6. ICE may lawfully detain civilly, but not imprison criminally,
 12 individuals it believes have no lawful basis for entering or remaining in the U.S.
 13 ICE may release most detained noncitizens on bond or parole, but overwhelmingly
 14 refuses to do so.

15 7. This Complaint challenges the conditions in the approximately 158
 16 facilities that hold ICE detainees for more than 72 hours ("Detention Facilities").²

17 8. On information and belief, ICE directly operates just five Detention
 18 Facilities, and has chosen to contract for the operation of the remaining 153
 19 facilities.³ The contractors include local sheriffs' offices and private prison
 20 corporations, such as GEO Group ("GEO") and CoreCivic (formerly known as
 21 Corrections Corporation of America), which have long histories of failing to
 22 provide constitutional conditions of confinement for those they imprison.⁴ Based on

23
 24 ² See ICE, *List of Over-72-Hour ICE Detention Facilities*,
 25 <https://www.ice.gov/doclib/detention/Over72HourFacilities.xlsx>. Upon information
 26 and belief, there may be additional ICE facilities operating that are not identified on
 27 this list.

28 ³ See *id.*

⁴ See, e.g., Amanda Holpuch, *Reports Reveal 'Egregious' Conditions in US Migrant Detention Facilities*, *The Guardian* (June 7, 2019),

1 available data from ICE, at least half of Defendants' detention beds are at facilities
 2 operated by private, for-profit companies.⁵ Defendants' choice to contract with
 3 these entities, Defendants' lack of oversight over the provision of care at Detention
 4 Facilities, and Defendants' failure to promulgate and enforce sufficient written
 5 policies to govern the care of detained individuals subjects Plaintiffs and the Class
 6 to a substantial risk of serious harm.

7 9. Because of the widespread unconstitutional conditions at ICE
 8 detention centers, organizational plaintiffs Inland Coalition for Immigrant Justice
 9 ("ICIJ") and Al Otro Lado have had to divert substantial resources to responding to
 10 those conditions, frustrating their respective organizational missions and interests in
 11 empowering immigrants with disabilities.

12 10. ICE Health Service Corps ("IHSC"), a component of ICE, is
 13 responsible for overseeing medical care at all of these facilities, and it directly
 14 provides healthcare at some Detention Facilities.⁶

15 11. Defendants are also responsible for ensuring detained individuals
 16 receive reasonable disability accommodations and otherwise do not suffer
 17
 18

19 [https://www.theguardian.com/us-news/2019/jun/07/us-migrant-detention-facilities-](https://www.theguardian.com/us-news/2019/jun/07/us-migrant-detention-facilities-egregious-conditions-reports)
 20 [egregious-conditions-reports](https://www.theguardian.com/us-news/2019/jun/07/us-migrant-detention-facilities-egregious-conditions-reports); Ryan Devereaux et al., *Immigrant Detainee Accuses*
 21 *ICE Contractor CoreCivic of Locking Him in Solitary Over \$8*, The Intercept (Apr.
 22 19, 2018), [https://theintercept.com/2018/04/19/solitary-confinement-immigration-](https://theintercept.com/2018/04/19/solitary-confinement-immigration-detention-ice-corecivic/)
 23 [detention-ice-corecivic/](https://theintercept.com/2018/04/19/solitary-confinement-immigration-detention-ice-corecivic/); John Burnett, *Miss. Prison Operator Out; Facility Called*
 24 *a 'Cesspool,'* NPR (Apr. 24, 2012),
[https://www.npr.org/2012/04/24/151276620/firm-leaves-miss-after-its-prison-is-](https://www.npr.org/2012/04/24/151276620/firm-leaves-miss-after-its-prison-is-called-cesspool)
[called-cesspool](https://www.npr.org/2012/04/24/151276620/firm-leaves-miss-after-its-prison-is-called-cesspool).

25 ⁵ Livia Luan, *Profiting from Enforcement: The Role of Private Prisons in U.S.*
 26 *Immigration Detention*, Migration Policy Institute (May 2, 2018),
[https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-](https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention)
[us-immigration-detention](https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention).

27 ⁶ ICE Health Services Corps, ICE, <https://www.ice.gov/ice-health-service-corps>;
 28 *see also* ICE Health Services Corps, ICE <https://www.ice.gov/ero/ihsc>.

1 discrimination based on disability, and they are also responsible for proper
2 monitoring and oversight of segregation and isolation practices and policies.

3 12. Of the approximately 55,000 beds at Detention Facilities, a substantial
4 percentage are in rural areas, at least an hour away from services needed to provide
5 medical and mental health care or disability accommodations, far from attorneys
6 who could provide representation and advocate for better conditions, and far from
7 advocates, watchdog organizations, and media whose monitoring could expose or
8 prevent abusive and unconstitutional conditions.⁷ For example, Plaintiff Melvin
9 Murillo Hernandez is detained at LaSalle ICE Processing Center (“LaSalle”), a
10 two-and-a-half hour drive to the nearest Level 1 Trauma Center. Plaintiffs Faour
11 Abdallah Fraihat, Jimmy Sudney, José Baca Hernández, Jose Segovia Benitez, Luis
12 Manuel Rodriguez Delgadillo, Raul Alcocer Chavez, and Ruben Darío Mencías
13 Soto are all detained at Adelanto ICE Processing Center (“Adelanto”), and may
14 need to be taken to Los Angeles, approximately two hours away, for specialty care.
15 Plaintiff Aristoteles Sanchez Martinez is detained at Stewart Detention Center
16 (“Stewart”), over 45 minutes away from qualified medical specialists to handle
17 specialized treatment or emergency situations.⁸

18 13. Specifically, Defendants have failed to ensure that conditions of
19 confinement in Detention Facilities comply with statutory and constitutional
20 requirements. As a result, unlawful conditions of confinement exist systemically
21 throughout immigration detention centers, and place Plaintiffs and members of the
22 Class at a substantial risk of serious harm.

23
24 ⁷ See ICE, *List of Over-72-Hour ICE Detention Facilities*, *supra* note 2.

25 ⁸ See, e.g., Britnee Davis, *Man Detained by ICE at Stewart Detention Center Dies*
26 *in Columbus Hospital*, Ledger Enquirer (July 25, 2019), [https://www.ledger-](https://www.ledger-enquirer.com/news/local/article233120673.html)
27 [enquirer.com/news/local/article233120673.html](https://www.ledger-enquirer.com/news/local/article233120673.html); see also Charles Bethea, *A*
28 *Medical Emergency, and the Growing Crisis at Immigration Detention Centers*,
The New Yorker (Sep. 13, 2017), [https://www.newyorker.com/news/news-desk/a-](https://www.newyorker.com/news/news-desk/a-medical-emergency-and-the-growing-crisis-at-immigration-detention-centers)
[medical-emergency-and-the-growing-crisis-at-immigration-detention-centers](https://www.newyorker.com/news/news-desk/a-medical-emergency-and-the-growing-crisis-at-immigration-detention-centers).

1 14. Approximately 24 people have died in ICE custody in the last two
2 years.⁹ During this fiscal year alone, at least seven individuals in ICE custody have
3 died.¹⁰

4 15. Defendants are fully aware of the deplorable conditions in Detention
5 Facilities. As described more fully below, Defendants have been informed
6 repeatedly—by their own inspection units, by other governmental inspectors and
7 agencies, by nongovernmental entities, and by numerous other sources—that
8 systemic unlawful conditions of confinement are rampant among its Detention
9 Facilities. Yet Defendants have consistently and repeatedly failed to take any
10 effective steps to monitor, oversee, and administer Detention Facilities, and to
11 ensure that these violations do not recur. Defendants have thus condoned or been
12 deliberately indifferent to the conduct that results in these unlawful conditions of
13 confinement.

14 16. Likewise, Defendants fail to ensure detained Plaintiffs and similarly
15 situated detained individuals with disabilities receive equal access, reasonable
16 accommodations, and placement in the least restrictive and most integrated setting
17 possible in violation of Section 504 of the Rehabilitation Act (“Section 504”),
18 29 U.S.C. § 794. Defendants regularly deny assistive devices and therapy to
19 individuals with vision, hearing, and mobility disabilities. For example, Plaintiff
20

21 ⁹ Lisa Riordan et al., *22 immigrants died in ICE detention centers during the past 2*
22 *years*, NBC News, (Jan. 6, 2019),
23 [https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-](https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781)
24 [centers-during-past-2-years-n954781](https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781); ICE News Release, *ICE detainee passes*
25 *away in Houston-area hospital* (July 1, 2019),
26 <https://www.ice.gov/news/releases/ice-detainee-passes-away-houston-area-hospital>;
27 *see also* Ariana Sawyer, *Another Needless Death in US Immigration Detention*,
28 Human Rights Watch (July 26, 2019).

¹⁰ ICE News Release, *ICE detainee passes away in Houston-area hospital* (July 1, 2019), [https://www.ice.gov/news/releases/ice-detainee-passes-away-houston-area-](https://www.ice.gov/news/releases/ice-detainee-passes-away-houston-area-hospital)
[hospital](https://www.ice.gov/news/releases/ice-detainee-passes-away-houston-area-hospital); *see also* Ariana Sawyer, *Another Needless Death in US Immigration Detention*, Human Rights Watch (July 26, 2019).

1 Ruben Darío Mencías Soto, who has dislocated and herniated discs in his back, had
 2 both his wheelchair and crutches taken away by detention staff leaving him without
 3 an assistive device to walk and in immense pain. Defendants also regularly confine
 4 those with mental health disabilities, as well as other disabilities, in restrictive
 5 segregation housing because of their disabilities, often exacerbating underlying
 6 conditions. Plaintiff Hamida Ali has schizophrenia, which was exacerbated when
 7 she was left in isolation at Aurora ICE Processing Center (“Aurora”) for about nine
 8 months. Plaintiff José Baca Hernández, who is blind, has not been provided
 9 accommodations and has had to rely on other detained individuals to read his
 10 immigration documents to him.

11 17. Defendants have the legal obligation to ensure that the conditions of
 12 confinement of individuals in their custody comply with statutory and constitutional
 13 requirements by providing adequate health care, providing disability
 14 accommodations, and ensuring that individuals are not subjected to punitive
 15 isolation. Defendants, however, have utterly failed to live up to these obligations.

16 18. Indeed, Defendants routinely ignore their responsibility to monitor and
 17 oversee Detention Facilities. For example, in July 2019, four Colorado politicians
 18 conducted an oversight visit to Aurora.¹¹ They reported that ICE claimed it had no
 19 medical authority at this facility or at other for-profit detention centers.¹²
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21
 22 ¹¹ Blair Miller, *Colorado’s Congressional Democrats Tour Aurora ICE Facility,*
 23 *Call for Changes*, The Denver Channel (Jul. 22, 2019 6:52 PM),
 24 [https://www.thedenverchannel.com/news/politics/colorados-congressional-](https://www.thedenverchannel.com/news/politics/colorados-congressional-democrats-tour-aurora-ice-facility-call-for-changes-and-its-closure)
[democrats-tour-aurora-ice-facility-call-for-changes-and-its-closure](https://www.thedenverchannel.com/news/politics/colorados-congressional-democrats-tour-aurora-ice-facility-call-for-changes-and-its-closure).

25 ¹² Denver 7, *Colorado Dems Speak After Tour of ICE Facility*, Facebook (Jul. 22,
 26 2019, 12:16 PM),
 27 [https://www.facebook.com/DenverChannel/videos/2358219197839326/UzpfSTU4](https://www.facebook.com/DenverChannel/videos/2358219197839326/UzpfSTU4MDAwODE6MTAxMDYwNDQ1OTk4MzAzMzk/)
[MDAwODE6MTAxMDYwNDQ1OTk4MzAzMzk/](https://www.facebook.com/DenverChannel/videos/2358219197839326/UzpfSTU4MDAwODE6MTAxMDYwNDQ1OTk4MzAzMzk/); U.S. Immigration & Customs
 28 Enf’t, Letter Response to February 28, 2019 Letter re: Public Health Risks &
 Treatment of Detainees at Detention Facilities (on file with Plaintiffs’ counsel).

1 19. Further, according to a January 2018 report by the Detention Watch
2 Network (“DWN”) and National Immigrant Justice Center (“NIJC”), ICE
3 “aggressively seeks to weaken the standards that govern immigration detention.”¹³

4 20. As a result, each year, Defendants’ detention policies and practices
5 place the mental and physical health of detained people at grave risk, deny them
6 reasonable accommodations, and otherwise subject them to discrimination on the
7 basis of disability. Absent intervention by this Court, Defendants will continue to
8 subject Plaintiffs and the Class to this unconstitutional and unlawful treatment.

9 **PARTIES**

10 **I. Plaintiffs**

11 21. Each named Plaintiff has been harmed and faces the ongoing and
12 substantial possibility of being harmed in the future by any of a number of systemic
13 failures by Defendants, including failure to ensure constitutionally adequate
14 medical and mental health care, failure to ensure that segregation is not improperly
15 administered, and failure to ensure that Detention Facilities comply with Section
16 504 of the Rehabilitation Act.

17 **A. Plaintiff Faour Abdallah Fraihat**

18 22. Plaintiff Faour Abdallah Fraihat is 57 years old and currently detained
19 at Adelanto. He is diagnosed with vision loss and mental health disabilities, and he
20 uses a wheelchair for mobility. He is a qualified individual with a disability as
21 defined in the Rehabilitation Act. Mr. Fraihat has required emergency care twice
22 while detained at Adelanto, and he has been placed in segregation for medical
23 reasons and denied access to any out-of-cell activities.
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25
26 ¹³ National Immigrant Justice Center & Detention Watch Network, *ICE Lies:*
27 *Public Deception, Private Profit*, at 4 (Jan. 2018),
28 [https://www.immigrantjustice.org/sites/default/files/content-type/research-](https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf)
[item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf](https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf).

1 23. Mr. Fraihat has been in the United States for most of his life, and he
2 fears returning to Jordan because he has received death threats since converting
3 from Islam to Christianity. Prior to being detained, he was living in San Bernardino,
4 California, where he owned a successful construction business. Mr. Fraihat has
5 been detained at Adelanto since December 2016. He was previously detained by
6 ICE in three other facilities from 2004 to 2009.

7 24. Mr. Fraihat lost vision in his left eye while detained at Adelanto. He
8 was denied care as his vision deteriorated; ICE did not provide a surgery
9 recommended by an off-site doctor in April 2019. In July 2019, a doctor told Mr.
10 Fraihat that his vision could not be restored with laser surgery due to the degree of
11 his vision loss. He also continues to have pain in his left eye.

12 25. Upon arrival to Adelanto in December 2016, Mr. Fraihat reported an
13 issue with a disc in his back and knee and back pain. He was provided with a
14 temporary wheelchair, but it was taken away after a month, and he did not receive
15 another wheelchair until February 2019, after months of his daily requests going
16 unanswered. For the more than one year in between, Mr. Fraihat was unable to get
17 to the yard or to the cafeteria to eat. During that time, he had to rely on officers to
18 bring him food, which did not always occur, often requiring him to depend on food
19 he purchased from the commissary.

20 26. Plaintiff Faour Abdallah Fraihat challenges Defendants' failure to
21 ensure constitutionally adequate medical and mental health care, failure to ensure
22 proper administration of segregation, and failure to ensure required
23 accommodations and other measures required to comply with Section 504 at
24 Detention Facilities.

25 **B. Plaintiff Marco Montoya Amaya**

26 27. Plaintiff Marco Montoya Amaya is 41 years old and currently detained
27 at Mesa Verde ICE Processing Center ("Mesa Verde"). For over a year, he has had
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1 a tentative diagnosis of end-stage neurocysticercosis—a progressive, invasive, and
2 severe brain parasite—for which he has received no treatment.

3 28. Mr. Montoya Amaya has also been diagnosed with several mental
4 health conditions, and he regularly experiences memory loss and confusion, as well
5 as visual and auditory hallucinations.

6 29. Mr. Montoya Amaya is a qualified individual with a disability as
7 defined in the Rehabilitation Act.

8 30. Mr. Montoya Amaya entered the United States in 2012 and lived in
9 Napa, California. When he entered ICE detention, Mr. Montoya Amaya was
10 detained at the Yuba County Jail, and he was later transferred to the Mesa Verde
11 ICE Processing Center in March 2019.

12 31. Plaintiff Marco Montoya Amaya challenges Defendants’ failure to
13 ensure constitutionally adequate medical and mental health care, failure to ensure
14 proper administration of segregation, and failure ensure compliance with Section
15 504 at Detention Facilities.

16 **C. Plaintiff Raul Alcocer Chavez**

17 32. Plaintiff Raul Alcocer Chavez is 26 years old and currently detained at
18 Adelanto Detention Center. He is Deaf, communicates in ASL, and is a qualified
19 individual with a disability as defined in the Rehabilitation Act.

20 33. Mr. Alcocer Chavez has not been provided with an ASL interpreter.
21 As a result, he did not at first understand that Adelanto is a Detention Facility, has
22 had great difficulty communicating with medical staff, and has been asked to sign
23 documents he did not understand. He has also never been able to access a
24 videophone, and thus has never had a call with a lawyer. Instead, he has received
25 only very limited access to a teletypewriter (a “TTY”), an outdated device that he
26 has great difficulty using because his reading and writing skills in English are
27 limited, and limited access to Skype, which he is currently prevented from using.
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1 34. Mr. Alcocer Chavez is a past Deferred Action for Childhood Arrivals
2 recipient from Mexico. Prior to being detained, he was living in Riverside,
3 California, and he graduated from the California School for the Deaf. Mr. Alcocer
4 Chavez has been detained at Adelanto since May 22, 2019. He has previously been
5 detained by ICE at Pahrump Detention Center in Nevada.

6 35. Plaintiff Raul Alcocer Chavez challenges Defendants' failure to ensure
7 constitutionally adequate medical and mental health care and their failure to ensure
8 compliance with Section 504 at Detention Facilities.

9 **D. Plaintiff Jose Segovia Benitez**

10 36. Plaintiff Jose Segovia Benitez is a 38-year old U.S. Marine Corps
11 veteran. He served in the Marine Corps for five years and did two tours of duty, one
12 for Operation Iraqi Freedom and one for Operation Enduring Freedom. He was
13 brought to the United States when he was a toddler, and he grew up wanting to
14 serve in the military and fight for his country as soon as he turned 18. He lived in
15 Long Beach, California, before he was detained.

16 37. In 2003, while deployed, Mr. Segovia Benitez was badly hurt by an
17 explosive device. He came home from service with depression, anxiety, hearing
18 loss, traumatic brain injury, and combat PTSD. He is a qualified individual with a
19 disability as defined in the Rehabilitation Act.

20 38. Mr. Segovia Benitez also has a heart condition. Since arriving at
21 Adelanto in January 2018, where he has since been detained, he has informed his
22 doctors of intermittent chest pain, dizziness, and other cardiology-related
23 symptoms, for which treatment has been delayed or denied. On at least one
24 occasion, he required emergency care to treat his heart condition.

25 39. Mr. Segovia Benitez has assisted in translating for deaf detainees at
26 Adelanto; although he is not fluent in ASL, he took three semesters of ASL at
27 community college. He has translated without any prompting from Adelanto, and
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1 he has assisted several deaf detainees in their requests to access the
2 accommodations and communication technologies to which they are entitled, and to
3 which Adelanto has denied them access. He has been deeply angered and frustrated
4 that deaf detainees do not have access to essential services they need.

5 40. Plaintiff Jose Segovia Benitez challenges Defendants' failure to ensure
6 constitutionally adequate medical and mental health care and their failure to ensure
7 compliance with Section 504 at Detention Facilities.

8 **E. Plaintiff Hamida Ali**

9 41. Plaintiff Hamida Ali is 28 years old and currently detained at the
10 Teller County Jail in Colorado ("Teller"), which contracts with ICE to hold
11 individuals in ICE custody. She was taken into ICE custody from the Salt Lake
12 County Jail, where she was receiving psychotropic medications and had expressed
13 suicidal ideation during her incarceration. She was transferred to ICE custody and
14 taken to Aurora in October 2018. She has been diagnosed with schizophrenia for
15 several years and is a qualified individual with a disability as defined in the
16 Rehabilitation Act. Ms. Ali is a native Arabic speaker and speaks English with
17 limited reading and writing skills.

18 42. Ms. Ali is a refugee from Sudan and has been in the United States for
19 most of her life. Before her detention, she was living in Utah with her extended
20 family and three young children, all of whom were born in Utah. Almost
21 immediately after being transferred to ICE, she was placed on suicide watch and
22 then isolated in a dorm alone for approximately nine months. As a result of her
23 segregation, Ms. Ali experienced several episodes of extreme psychological distress
24 and suicidal ideation. Since July 9, 2019, she has been in ICE custody at Teller
25 County.

26 43. At least once since her transfer to Teller, she has had to stay overnight
27 at Aurora for court and placed in isolation. Given ICE's unpredictable transfer
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1 practices, Ms. Ali remains at risk of being returned to Aurora and placed back in a
2 dorm by herself or in another form of segregation at Teller or any other facility
3 where she is housed.

4 44. Plaintiff Hamida Ali challenges Defendants' failure to ensure
5 constitutionally adequate medical and mental health care, failure to ensure proper
6 administration of the use of segregation, and failure to ensure compliance with
7 Section 504 at Detention Facilities.

8 **F. Plaintiff Melvin Murillo Hernandez**

9 45. Plaintiff Melvin Murillo Hernandez is 18 years old and currently
10 detained at LaSalle in Jena, Louisiana.

11 46. Mr. Murillo Hernandez has multiple life-threatening food allergies, for
12 which he was not given a special diet for more than six months while in ICE
13 custody. As a result, he has suffered seven severe allergic reactions, four of which
14 required hospitalization due to anaphylactic shock.

15 47. Mr. Murillo Hernandez has been placed in medical segregation since
16 arriving at LaSalle in May 2019, solely based on his severe allergies. Though he
17 relied on other detained individuals to bring him to facility staff during previous
18 anaphylactic shocks in which he lost consciousness, he is now confined alone in a
19 cell 24 hours a day. Facility staff now bring all of his meals, which consist mostly
20 of eggs and rice, to his cell.

21 48. Mr. Murillo Hernandez is a qualified individual with a disability as
22 defined in the Rehabilitation Act.

23 49. Prior to being detained at LaSalle, Mr. Murillo Hernandez, was
24 detained at Tallahatchie County Correctional Facility ("Tallahatchie") and
25 Mississippi and River Correctional Center ("River").
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1 50. Plaintiff Melvin Murillo Hernandez challenges Defendants' failure to
2 ensure constitutionally adequate medical and mental health care and their failure to
3 ensure compliance with Section 504 in Detention Facilities.

4 **G. Plaintiff Jimmy Sudney**

5 51. Plaintiff Jimmy Sudney is 28 years old and currently detained at
6 Adelanto. He has vision loss, mental health disabilities including PTSD, and high
7 blood pressure, and is a qualified individual with a disability as defined in the
8 Rehabilitation Act.

9 52. Mr. Sudney came to the United States as a Lawful Permanent Resident
10 in 2012 and lived in Chandler, Arizona. Prior to being arrested in July 2014, Mr.
11 Sudney was studying nursing at Arizona State University and working as a medical
12 technician and certified caregiver at senior living, memory care, and retirement
13 facilities.

14 53. Prior to arriving at Adelanto in May 2018, Mr. Sudney was detained at
15 Eloy Detention Center ("Eloy"), where he had been in ICE custody since December
16 2016.

17 54. Mr. Sudney has experienced numerous delays in care for his vision.
18 Prior to being transferred to ICE, he had two surgeries to address his vision loss,
19 but was transferred before his third scheduled surgery in December 2016. The third
20 surgery was scheduled to address glaucoma, a second-degree cataract, and a
21 detaching retina. While at Eloy, Mr. Sudney required emergency off-site care
22 related to his eye on three separate occasions. Mr. Sudney continues to lose vision
23 in his eye—it is blurry when he reads, stays red, and he is starting to see flashing
24 light and dripping on his eye.

25 55. In retaliation for filing a grievance against an officer, Mr. Sudney was
26 improperly placed in segregation at Adelanto for a week. While in isolation, Mr.
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1 Sudney heard banging in and around his cell that triggered a PTSD flashback in
2 which he relived the earthquake in Haiti where his house collapsed around him.

3 56. Plaintiff Jimmy Sudney challenges Defendants' failure to ensure
4 constitutionally adequate medical and mental health care, failure to ensure proper
5 administration of the use of segregation, and failure to ensure compliance with
6 Section 504 at Detention Facilities.

7 **H. Plaintiff José Baca Hernández**

8 57. Plaintiff José Baca Hernández is 23 years old and currently detained at
9 Adelanto. Mr. Baca is blind and is a qualified individual with a disability as defined
10 in the Rehabilitation Act.

11 58. Mr. Baca has been in the United States for most of his life. Prior to
12 detention, he was living in Orange County, California, working as a dishwasher,
13 and seeking a U-Visa because he was the victim of a crime in the United States.
14 Prior to being transferred to Adelanto in April 2018, Mr. Baca was detained at
15 ICE's Theo Lacy Facility ("Theo Lacy").

16 59. Mr. Baca became blind in January 2015 after being shot. Since being
17 in ICE custody, Mr. Baca has not been provided effective communication. He has
18 to rely on his cell mates, attorneys, and, at times, guards to read any documents,
19 including those related to his medical care and immigration case. When Mr. Baca
20 needs to submit a written request, as required to meet with an ICE officer or access
21 medical care, he has to rely on others to write it for him.

22 60. Plaintiff José Baca Hernández challenges Defendants' failure to ensure
23 constitutionally adequate medical and mental health care, failure to ensure proper
24 administration of the use of segregation, and failure to ensure compliance with
25 Section 504 at Detention Facilities.
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I. Plaintiff Edilberto García Guerrero

61. Plaintiff Edilberto García Guerrero is 47 years old. He was a long-time resident of Utah prior to being detained by ICE in April 2018. His wife and teenage daughter are both U.S. citizens and still reside in Utah. Mr. García Guerrero speaks Spanish and has limited reading and writing skills.

62. Mr. García Guerrero is currently detained at Aurora. He has chronic pain in his neck and shoulder on his left side. This chronic pain is the result of an attack he suffered while in ICE custody during the spring of 2019. Mr. García Guerrero also has low vision in his left eye and is hard of hearing in his left ear, both of which has been left untreated since the attack. He has alerted the facility to these issues and has still not received treatment.

63. Additionally, Mr. García Guerrero has extreme pain and swelling in his right ankle. Several years prior to his detention, he fell off a roof, shattering his leg and requiring reconstructive surgery, including the placement of screws in his right ankle. More recently, Mr. García Guerrero suffered another injury to his right ankle, which occurred after falling down while his ankles were shackled in ICE custody. An outside specialist recommended surgical intervention. However, the GEO group, which operates the facility under a contract with ICE, has long refused to provide the surgery, choosing to treat it as “elective” until, on information and belief, days before the filing of this Complaint.

64. Plaintiff Edilberto García Guerrero challenges Defendants’ failure to ensure constitutionally adequate medical and mental health at Detention Facilities.

J. Plaintiff Martín Muñoz

65. Plaintiff Martín Muñoz has been detained at Adelanto Detention Center for more than two years. He has insulin-dependent Type 2 diabetes, high cholesterol, high blood pressure, depression, and anxiety.

66. Mr. Muñoz has been in the United States for more than 40 years. Prior to being detained, he was living in Riverside County, California, where he worked

1 as a handyman for more than 25 years. He has four grown children who are United
2 States citizens.

3 67. In September 2017, Mr. Muñoz had an insulin overdose when
4 Adelanto staff administered more than triple his regular dose. Because the
5 administration of too much insulin can lead to a hypoglycemic coma, Mr. Muñoz
6 was taken to medical observation when Adelanto staff realized the mistake, and
7 Adelanto staff wrote him a letter admitting fault. In the aftermath of this overdose,
8 Mr. Muñoz was never evaluated by a doctor.

9 68. Mr. Muñoz has also gone without insulin and high blood pressure
10 medication several times while in ICE detention. In February 2019, he went without
11 insulin for six days because his doctor had not timely refilled his prescription; in
12 Spring 2019, Adelanto ran out of high blood pressure medication and it took two
13 weeks for Mr. Muñoz to receive it again. In Summer 2019, he again did not receive
14 insulin for 10 days, following a medical encounter in which staff told him that
15 insulin was not in the system for him. At the end of July, he went a week without
16 Lipitor, his cholesterol medication, despite asking a nurse for it at pill pass three
17 times.

18 69. Plaintiff Martín Muñoz challenges Defendants' failure to ensure
19 constitutionally adequate medical care and failure to ensure compliance with
20 Section 504 at Detention Facilities.

21 **K. Plaintiff Luis Manuel Rodriguez Delgadillo**

22 70. Plaintiff Luis Manuel Rodriguez Delgadillo is 29 years old and has
23 been detained at Adelanto since March 2019.

24 71. Mr. Rodriguez Delgadillo is a nearly lifelong California resident; most
25 of his family members are United States citizens, including his two small children.
26 Prior to his detention, he resided in Palm Desert, California.
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1 72. Prior to his detention, Mr. Rodriguez Delgadillo had been diagnosed
2 with schizophrenia and bipolar disorder, for which he was taking medication, and
3 he is a qualified person with a disability as defined in the Rehabilitation Act. After
4 years of instability and acute psychotic episodes, with the support of his family and
5 in the care of a treating psychiatrist, Mr. Rodriguez Delgadillo had finally achieved
6 some measure of mental health stability before he was detained. However, since his
7 detention at Adelanto, his shifting medication regime, lack of therapy and failure of
8 mental health staff to mitigate stressors, have all caused his mental health to
9 noticeably decline.

10 73. Mr. Rodriguez Delgadillo has missed court on two occasions due to
11 placement in medical observation after expressing suicidal or other harmful
12 ideation. His detention has thus been prolonged by inadequate mental health
13 treatment.

14 74. Plaintiff Luis Manuel Rodriguez Delgadillo challenges Defendants'
15 failure to ensure constitutionally adequate medical and mental health care and
16 failure to ensure compliance with Section 504 at Detention Facilities.

17 **L. Plaintiff Ruben Darío Mencías Soto**

18 75. Plaintiff Ruben Darío Mencías Soto came to the United States to seek
19 refuge. Mr. Mencías Soto is 36 years old and has been detained at Adelanto since
20 December 2018.

21 76. Mr. Mencías Soto is a qualified individual with a disability as defined
22 in the Rehabilitation Act. Since December 2018, he has suffered from severe back
23 and leg pain due to a nerve compression and a herniated disc in his back after
24 falling in the shower at Adelanto. Due to his pain, he is unable to walk without
25 assistance, and facility staff have given him a single physical therapy appointment.

26 77. Additionally, though Mr. Mencías Soto requires both a wheelchair and
27 crutches to fully access the Adelanto facility, staff at various times have taken both
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1 of those mobility aids away from him. Mr. Mencías Soto remains without crutches,
2 and his mobility is severely limited. He had a wheelchair taken away from him for
3 over a month, such that he was regularly unable to go to the cafeteria to eat. It was
4 only returned upon the intervention of his attorney.

5 78. Plaintiff Ruben Darío Mencías Soto challenges Defendants' failure to
6 ensure constitutionally adequate medical care and failure to ensure compliance with
7 Section 504 at Detention Facilities.

8 **M. Plaintiff Alex Hernandez**

9 79. Plaintiff Alex Hernandez is 48 years old and currently detained at
10 Etowah County Detention Center ("Etowah"). He has a torn rotator cuff in his right
11 shoulder, as well as persistent pain and inflammation in his back, right hip, legs,
12 and both feet, which limit his mobility, range of motion, and ability to engage in
13 activities of daily living. He is also diagnosed with Barrett's esophagus,
14 hypertension, and PTSD, and he has some vision loss. Mr. Hernandez is a qualified
15 individual with a disability as defined in the Rehabilitation Act.

16 80. Mr. Hernandez has been in the United States for most of his life. He
17 was previously a resident of Los Angeles, California.

18 81. Prior to his transfer to Etowah on December 20, 2018, ICE detained
19 Mr. Hernandez at the Alexandria Staging Facility ("Alexandria"), Otay Mesa
20 Detention Center ("Otay Mesa"), LaSalle, and Mesa Verde. Mr. Hernandez has
21 been in ICE custody since October 2016.

22 82. Mr. Hernandez has seen three different orthopedic surgeons who have
23 recommended surgery to repair his torn rotator cuff, but ICE has not provided the
24 surgery. He experiences severe pain on a daily basis due to his torn rotator cuff.

25 83. Mr. Hernandez also has chronic and severe pain in both feet, his right
26 hip, legs, and his lower back, which makes it painful for him to stay standing up for
27 more than twenty minutes at a time.
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1 84. Mr. Hernandez has been placed in segregation and denied access to
2 recreation spaces, the law library, and a telephone to contact his family and
3 attorney.

4 85. Plaintiff Alex Hernandez challenges Defendants' failure to ensure
5 constitutionally adequate medical and mental health care, failure to ensure proper
6 administration of segregation, and failure to ensure compliance with Section 504 at
7 Detention Facilities.

8 **N. Plaintiff Aristoteles Sanchez Martinez**

9 86. Plaintiff Aristoteles Sanchez Martinez is 46 years old and currently
10 detained at Stewart. He is diagnosed with diabetes, neuropathy, hypertension, bone
11 spur on left foot, Charcot foot, avascular necrosis, non-palpable pulses in lower
12 extremities, and venous insufficiency, and is a qualified individual with a disability
13 as defined in the Rehabilitation Act. Mr. Sanchez Martinez also has a large right
14 flank hernia on his abdomen that causes severe pain.

15 87. Since being in ICE custody, Mr. Sanchez Martinez's health has
16 worsened. He uses a wheelchair because he is unable to walk due to his right flank
17 hernia, Charcot foot, avascular necrosis, and non-palpable pulse and venous
18 insufficiency in his lower extremities.

19 88. Mr. Sanchez Martinez has been in ICE custody since September 11,
20 2018. Prior to arriving at Stewart on October 3, 2018, Mr. Sanchez Martinez was
21 confined at the Folkston ICE Processing Center ("Folkston").

22 89. Mr. Sanchez Martinez has been in the United States over half his life,
23 and he formerly resided in Queens, New York.

24 90. Plaintiff Aristoteles Sanchez Martinez challenges Defendants' failure
25 to provide constitutionally adequate medical and mental health care and failure to
26 ensure compliance with Section 504 in Detention Facilities.
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O. Plaintiff Sergio Salazar Artaga

91. Mr. Salazar Artaga is 25 years old and currently detained at Florence Correctional Center (“Florence”). Mr. Salazar Artaga has been in the United States since the age of one. Before entering ICE custody, he was living in Phoenix, Arizona.

92. Mr. Salazar Artaga has cerebral palsy and is a qualified individual with a disability as defined in the Rehabilitation Act. He has chronic pain in his back and knees, for which he has not received appropriate, consistent pain medication for pain management

93. Mr. Salazar Artaga uses a cane and is awaiting leg and knee braces for stability as he walks around. Without these braces, he has fallen three times already since coming to Florence.

94. In addition, Mr. Salazar Artaga was unable to see a mental health care provider for an evaluation and anti-psychotic medications until after a month of detention, after he had been put on suicide watch twice for self-harming behavior and hallucinations. Florence has since diagnosed him with anxiety disorder and atypical psychosis.

95. He has been detained by ICE at Florence since March 2019.

96. Plaintiff Sergio Salazar Artaga challenges Defendants’ failure to ensure constitutionally adequate medical and mental health care and failure to ensure compliance with Section 504 at Detention Facilities.

P. Plaintiff Inland Coalition for Immigrant Justice

97. Plaintiff Inland Coalition for Immigrant Justice (“ICIJ”) is a nonprofit, nonpartisan organization established in 2008 in California. ICIJ has a nonprofit fiscal sponsor also incorporated in California and is working towards nonprofit incorporation.

98. ICIJ is an immigrant-led community-based coalition organization that promotes justice for immigrants in the Inland Empire region of California,

1 headquartered in Ontario, California. ICIJ's mission is convening organizations to
2 collectively advocate and work to improve the lives of immigrant communities
3 while working toward a just solution to the immigration system.

4 99. ICIJ engages in capacity building, community forums, and community
5 engagement, carrying out such activities as public advocacy, providing community
6 resources, educating the immigrant community, and ensuring that immigrant voices
7 are part of substantial public discussions. As the result of substandard conditions,
8 ICIJ has been forced to devote a growing portion of its work is to support people
9 detained in ICE custody at Adelanto Detention Center, which is less than an hour
10 away from ICIJ's main office, diverting its resources from other organizational
11 activities.

12 100. Defendants' constitutionally inadequate policies regarding conditions
13 of confinement and failure to provide disability accommodations have frustrated
14 Plaintiff ICIJ's mission, as well as ICIJ's organizational interest in empowering
15 immigrants with disabilities. Defendants' policies and practices have forced ICIJ to
16 divert significant resources away from its other programs and its assistance of other
17 migrants, refugees, asylum seekers, and Inland Empire immigrant communities.

18 101. Because of Defendants' failure to provide and ensure constitutionally
19 adequate medical care and mental health care, and to ensure disability
20 accommodations and other measures required by Section 504 of the Rehabilitation
21 Act to detained individuals in immigration detention, ICIJ has been forced to
22 expend additional, significant resources on organizing work in support of
23 immigrants in ICE custody in Adelanto. Since November 2018, ICIJ has had a staff
24 member who works full-time to support people at Adelanto, including those who
25 are vulnerable in detention due to medical conditions, mental health disabilities, and
26 other disabilities. Along with several partner organizations, the staff member
27 organizes a network of volunteer visitors to detained people at Adelanto. She
28 provides training to the volunteers. She supports families of detained people who

1 have medical issues by helping gather medical records, drafting letters of support,
2 and communicating with ICE regarding the medical needs. She coordinates with
3 doctors for medical opinions and other support. Further, ICIJ is in the process of
4 hiring a coordinator to do medical referrals full-time.

5 102. A second ICIJ staff member works to secure legal representation to
6 defend from deportation Inland Empire residents and asylum seekers who are
7 detained at Adelanto. She also coordinates a rapid response network to try to
8 prevent more detentions at Adelanto.

9 103. A third ICIJ staff member splits his time between organizing on behalf
10 of detained individuals at Adelanto and coordinating deportation defense for people
11 at Adelanto. He particularly focuses on support for people who are getting released
12 from Adelanto, including housing and immediate medical attention.

13 104. ICIJ has developed a protocol to advocate on behalf of people at
14 Adelanto who are experiencing medical emergencies, a time-intensive process that
15 involves coordinating with family members and previous medical providers;
16 referring individuals to a collaborating social worker when the emergency has a
17 mental health component; and intensely advocating with ICE at Adelanto to try to
18 ensure that the emergency is addressed. By way of example, ICIJ activated the
19 protocol on behalf of a man who was receiving experimental treatment for a serious
20 medical condition, whose immune system had been weakened by the treatment, and
21 who was at risk of missing necessary doses of the treatment because Adelanto
22 would not accept any information about it.

23 105. Most recently, in June 2019, ICIJ spent significant resources to open
24 an office in Adelanto. This office will serve as the headquarters for the staffer who
25 organizes at Adelanto, as well as a location for visitation volunteers and family
26 members visiting loved ones detained at Adelanto to rest, prepare for their visits,
27 and share information with ICIJ staff.
28

1 106. If ICIJ were not forced to divert so many resources to addressing
2 Defendants' unlawful practices at Adelanto, the organization would have more
3 capacity to conduct advocacy on behalf of immigrants in San Bernardino County
4 and throughout the state of California; to provide more legal services for affirming
5 the rights of immigrants, not defending them from deportation; and working to
6 promote the rights of and justice for immigrant communities in Southern California.

7 107. ICIJ has also dedicated staff time and fundraising efforts to paying
8 bonds for people detained at Adelanto. ICIJ prioritizes paying bonds for immigrants
9 whose mental or physical health has deteriorated while being detained. For
10 example, the largest bond they have raised money for was \$21,000 for a young man
11 whose mental health deteriorated over the course of his prolonged detention and for
12 his brother.

13 108. Moreover, ICIJ diverts significant resources to situating its work at
14 Adelanto and throughout the Inland Empire in the national landscape of
15 immigration trends, including federal detention policies and practices and
16 organizing efforts around them. For example, ICIJ is a paying member of a national
17 network that coordinates support for detained immigrants. ICIJ also tracks
18 information and provides it to national organizations who are looking for on-the-
19 ground, up-to-date information about Adelanto. ICIJ spends resources to send staff
20 members to conferences throughout the country and spends staff time preparing
21 presentations and information to be shared.

22 109. Plaintiff Inland Coalition for Immigrant Justice challenges Defendants'
23 failure to ensure constitutionally adequate medical and mental health care, failure to
24 ensure proper administration of segregation, and failure to ensure compliance with
25 Section 504 at Detention Facilities.

1 **Q. Plaintiff Al Otro Lado**

2 110. Plaintiff Al Otro Lado is a nonprofit, nonpartisan organization
3 established in 2014 and incorporated in California.

4 111. Al Otro Lado is a legal services organization that serves indigent
5 migrants, refugees, deportees, and their families, and operates primarily in Los
6 Angeles, California; San Diego, California; and Tijuana, Mexico; although it
7 provides referrals and assistance to indigent migrants and refugees across the
8 United States. Al Otro Lado's mission is to coordinate and provide screening,
9 advocacy, and legal representation for individuals in immigration proceedings; to
10 seek redress for civil rights violations, including disability rights violations; and to
11 provide assistance with other legal and social service needs.

12 112. Defendants' constitutionally inadequate policies regarding conditions
13 of confinement and failure to provide disability accommodations have frustrated
14 Plaintiff Al Otro Lado's mission, as well as Al Otro Lado's organizational interest
15 in supporting and empowering migrants, refugees, and deportees with disabilities.
16 Defendants' policies and practices have forced Al Otro Lado to divert significant
17 resources away from its other programs and its assistance of other migrants,
18 refugees, asylum-seekers, and deportees, and have made it much harder and more
19 resource-intensive for Al Otro Lado to represent many of its existing detained
20 clients in their immigration proceedings.

21 113. Because of Defendants' failure to provide and ensure constitutionally
22 adequate physical medical care and disability accommodations to detained
23 individuals in immigration detention, Al Otro Lado has been forced to expend
24 additional, significant resources when assisting detained clients with
25 unaccommodated, untreated, and poorly treated medical conditions that it is not
26 required to expend for its other clients. In such situations, Al Otro Lado must
27 conduct additional and often lengthy in-detention visits, advocacy, investigation,
28 medical record requests, and medical expert review to advocate for its clients' right

1 to medical treatment and accommodations, while also representing its clients in
2 immigration proceedings. If Al Otro Lado's clients were provided with appropriate
3 medical care and accommodations, it would be able to take on additional cases with
4 the extra time and resources it currently spends on its detained clients with
5 unaccommodated disabilities and poorly treated medical problems.

6 114. Al Otro Lado has and has had many detained clients with medical
7 conditions requiring additional advocacy, most of whom are or were detained at
8 Otay Mesa and Adelanto. Al Otro Lado's management estimates that staff must
9 spend at least one-third more staff resources to represent its clients with untreated
10 or unaccommodated medical conditions in immigration proceedings as a result of
11 Defendants' policies.

12 115. For example, an Al Otro Lado staff attorney spent several days
13 investigating and advocating for a client with HIV to get the medicine they needed
14 to be safe in immigration detention, such that the client would be healthy and stable
15 enough to proceed on their immigration case for which Al Otro Lado was originally
16 retained.

17 116. As another example, Al Otro Lado has had two clients lose
18 pregnancies in custody due to a detention facility's failure to provide timely
19 medical intervention. Consequently, Al Otro Lado staff have had to expend
20 significant additional time to prepare pregnant asylum seekers to enter custody,
21 including counseling asylum seekers regarding the potential risk of miscarriage and
22 coordinating with medical providers to obtain documentation of pregnancy.

23 117. Further, because of Defendants' failure to provide constitutionally
24 adequate conditions and mental health care, Al Otro Lado has been forced to
25 expend additional resources to represent its detained clients with serious mental
26 health conditions in their immigration proceedings. When Defendants do not
27 properly treat Al Otro Lado's clients' mental health conditions, or improperly place
28 such clients in segregation and thus worsen their mental health conditions, it is

1 more challenging for Al Otro Lado to visit and communicate with, and thus
2 advocate for and defend, its clients. Al Otro Lado staff have to spend additional
3 time and resources to develop the cases of its clients with poorly treated mental
4 health conditions that, if those conditions were properly treated, could instead be
5 spent on representing a larger number of clients and on pursuing other programs.

6 118. Almost all of Al Otro Lado's detained clients have mental health
7 conditions, many of which require additional advocacy. Staff must regularly go to
8 meet with clients with serious mental health conditions more times than they would
9 otherwise need to for other clients they are representing in immigration
10 proceedings, solely due to Defendants' failure to provide constitutionally adequate
11 mental health care.

12 119. For example, Al Otro Lado's detained clients with schizophrenia and
13 other serious mental health conditions are often unnecessarily taken off medications
14 that previously provided those clients with mental health stability out of detention.
15 When that happens, Al Otro Lado attorneys are often unable to communicate with
16 these clients, and thus must either visit their clients more often in the hope of
17 visiting with them on a day when communication with the client is possible; visit
18 them in an off-site hospital setting where it is impossible to see the client in a
19 private setting, and where staff may be required to spend a great deal of time to
20 even seek permission to visit their clients; or take other additional efforts to
21 investigate their clients' cases to be able to adequately and ethically present those
22 cases in immigration court.

23 120. In addition, in response to Defendants' failure to provide
24 constitutionally adequate conditions and disability accommodations, Al Otro Lado
25 often diverts staff time and other resources to represent detained individuals in need
26 of an urgent change in circumstances—including provision of essential medical
27 care, accommodations, or other constitutionally adequate conditions of
28 confinement—solely on bond or parole.

1 121. As one of many examples, upon learning that a detained client who
2 was HIV-positive was in a dire medical condition that was largely going untreated,
3 an Al Otro Lado attorney expedited his medical parole application due to the
4 severity of his condition. The attorney was unable to complete a variety of other
5 work for other clients during that emergency period, and instead spent additional
6 time coordinating with doctors, finding the client adequate shelter that could
7 support the client's condition, and pursuing parole, among other things.

8 122. Several of Defendants' failures to provide constitutionally adequate
9 conditions and accommodations overlap for the same Al Otro Lado clients. For
10 example, a number of Al Otro Lado's detained clients are both trans and HIV-
11 positive. Staff often are required to expend extra resources to advocate for adequate
12 medical and mental health treatment for these clients, ranging from advocating in
13 the face of the provision of inappropriate retro-viral medication or no medication,
14 inappropriate mental health treatment, placement in housing units with people with
15 infectious diseases that uniquely threaten people with HIV, and prolonged isolation
16 and solitary confinement nominally because of potential exposure to infection
17 diseases like mumps and the chicken pox, among other issues.

18 123. Because of Defendants' known failure to provide adequate medical
19 and mental health care and appropriate health screenings, Al Otro Lado has also
20 had to divert resources in Tijuana, Mexico, to coordinate and in some instances pay
21 for medical examinations and treatment for asylum-seekers and migrants who may
22 be detained upon their entry into the United States, as well as to otherwise
23 coordinate documentation of their medication condition so that they may advocate
24 for their need for medical treatment upon entering custody. If asylum-seekers and
25 migrants were able to receive appropriate health screenings upon entry into
26 Defendants' custody, and to receive appropriate treatment upon entry into their
27 custody, Al Otro Lado could instead coordinate its resources to support asylum-
28 seekers and migrants in other ways aligned with its mission.

124. In addition, in part as a result of Defendants' failure to provide adequate medical care and appropriate health screenings, the detention facilities in which Al Otro Lado visits clients have had numerous outbreaks of mumps and chicken pox to which large populations of people in detention may have been exposed. These outbreaks result in lengthy quarantines affecting many more of Al Otro Lado's clients than would otherwise be affected if Defendants had quickly identified and adequately addressed such infectious diseases. When clients are quarantined due to such failures, Al Otro Lado staff are unable to visit with clients about their immigration cases, and thus must put additional time into attempting more client visits, rescheduling visits, and rescheduling court dates.

125. Al Otro Lado also operates a pro bono referral service for migrants and asylum-seekers in detention across the country. Because of Defendants' failure to provide constitutionally adequate care and disability accommodations to people in its custody, Al Otro Lado has had to divert its very limited resources for providing referrals and seeking representation toward referrals for detained individuals at imminent risk of physical harm because of these policies, and thus away from other programs and services in line with its mission.

126. Plaintiff Al Otro Lado challenges Defendants' failure to ensure constitutionally adequate medical and mental health care, failure to ensure proper administration of segregation, and failure to ensure compliance with Section 504 at Detention Facilities.

II. Defendants

A. Defendant U.S. Immigration Customs and Enforcement

127. Defendant U.S. Immigration and Customs Enforcement is a component of DHS. As the principal investigative arm of DHS, ICE is charged with enforcement of immigration laws. ICE's primary duties include the investigation of persons suspected to have violated immigration laws, and the apprehension,

1 detention, and removal of noncitizens who are unlawfully present in the United
2 States.

3 **B. Defendant U.S. Department of Homeland Security**

4 128. Defendant U.S. Department of Homeland Security is a federal
5 executive agency responsible for, among other things, enforcing federal
6 immigration laws and overseeing lawful immigration to the United States.

7 **C. Defendant Kevin McAleenan, Acting Secretary of DHS**

8 129. Defendant Kevin McAleenan is the Acting Secretary of DHS, charged
9 with enforcing and administering federal immigration laws. He oversees each of the
10 agencies within DHS, including ICE. He has ultimate authority over all policies,
11 procedures, and practices as applied to ICE Detention Facilities. Defendant
12 McAleenan is sued in his official capacity.

13 **D. Defendant Matthew T. Albence, Acting Director of ICE**

14 130. Defendant Matthew T. Albence is the Acting Director of ICE, charged
15 with enforcing federal immigration laws by detaining and removing noncitizens. He
16 is charged with oversight and monitoring of all policies, procedures, and practices
17 as applied to ICE Detention Facilities. Defendant Albence is sued in his official
18 capacity.

19 **E. Defendant Derek N. Brenner, Deputy Director of ICE**

20 131. Defendant Derek N. Benner is the Deputy Director of ICE. In this
21 capacity, Benner executes oversight of ICE's day-to-day operations and oversees a
22 workforce of more than 20,000 employees assigned to more than 400 domestic and
23 international offices. Defendant Benner is sued in his official capacity.

24 **F. Defendant Timothy S. Robbins, Acting Executive Associate Director of
25 ERO**

26 132. Defendant Timothy S. Robbins is the Acting Executive Associate
27 Director of Enforcement and Removal Operations ("ERO"). ERO enforces the
28

1 nation's immigration laws, identifies and apprehends removable noncitizens, and
2 detains and removes these individuals from the United States when necessary. In
3 this capacity, Robbins manages 24 field offices nationwide. Defendant Robbins is
4 sued in his official capacity.

5 **G. Defendant Tae Johnson, Assistant Director of Custody Management of**
6 **ERO**

7 133. Defendant Tae Johnson is the Assistant Director of Custody
8 Management, ERO. Johnson is responsible for policy and oversight of the
9 administrative custody of detained immigrants. In this capacity, Johnson oversees
10 and monitors detention operations, including those at local and state facilities
11 operating under an Intergovernmental Service Agreement ("IGSA"), contract
12 Detention Facilities, ICE-owned facilities, and facilities operated by the Bureau of
13 Prisons ("BOP"). Defendant Johnson is sued in his official capacity.

14 **H. Defendant Dr. Stewart D. Smith, Assistant Director of ICE Health**
15 **Service Corps**

16 134. Defendant Dr. Stewart D. Smith is the Assistant Director for ICE
17 Health Service Corps, which provides medical, dental, and mental healthcare
18 services at 21 facilities nationwide and manages off-site medical care for detained
19 individuals housed in 240 additional IGSA facilities. Smith oversees, monitors, and
20 is charged with ensuring adequate healthcare for all ICE detainees nationwide.
21 Defendant Smith is sued in his official capacity.

22 **I. Defendant Jacki Becker Klopp, Assistant Director of Operations**
23 **Support of ERO**

24 135. Defendant Jacki Becker Klopp is the Assistant Director of Operations
25 Support, ERO. In this capacity, Klopp is responsible for formulation and execution
26 of the overall budget of ICE detention, financial management, facilities
27 management, and hiring and human resources management. Klopp also provides
28

1 planning and oversight of ERO facilities and construction. Defendant Klopp is sued
2 in her official capacity.

3 **J. Defendant David P. Pekoske, Senior Official Performing Duties of the**
4 **Deputy Secretary of DHS**

5 136. Defendant David P. Pekoske is the Senior Official Performing the
6 Duties of the Deputy Secretary of DHS. Upon information and belief, until the
7 Deputy Secretary position is filled, Defendant Pekoske is the senior official charged
8 with overseeing the day-to-day operations of DHS. Defendant Pekoske is sued in
9 his official capacity.

10 **JURISDICTION**

11 137. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1343. This
12 action seeks declaratory and injunctive relief under 28 U.S.C. §§ 1343, 2201, and
13 2202, and 29 U.S.C. § 794a.

14 **VENUE**

15 138. Venue is properly in this district pursuant to 28 U.S.C. § 1391(e)(1),
16 because at least one plaintiff resides in this district

17 **FACTUAL ALLEGATIONS**

18 **III. Defendants Subject Thousands of Civil Detainees to Punitive Conditions**
19 **Despite the Availability of Alternatives.**

20 139. Many detained individuals are recently arrived asylum seekers. These
21 individuals have often fled traumatic violence, persecution, and severe deprivation
22 in their home countries only to experience violence and further trauma on their
23 journeys to this country. For example, according to some reports, approximately
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25
26
27
28

1 one-third of asylum-seeking women experience sexual or gender-based violence on
2 their journey to the U.S.¹⁴

3 140. Other detained individuals are individuals apprehended in the United
4 States, who often have deep roots and family in this country and are dealing with
5 the trauma of forced separation from their children and spouses and the prospect of
6 that separation becoming permanent. For example, in 2017, Defendants deported
7 approximately 27,080 individuals who had U.S. citizen children.¹⁵ Based on data
8 from 2016, nearly a third of unauthorized individuals live with a U.S. citizen child,
9 and about 12% are married to a U.S. citizen.¹⁶

10 141. The majority of those detained by ICE have no experience with the
11 prison system in this country or their country of origin. Most of the individuals in
12 ICE custody have not been convicted of any crime. As of June 30, 2018, 58% of the
13 individuals in ICE custody had no criminal convictions.¹⁷ An even larger
14

15
16 ¹⁴ *Forced to Flee Central America's Northern Triangle: A Neglected Humanitarian*
17 *Crisis*, Doctors Without Borders, at 5 (May 2017),
18 https://www.doctorswithoutborders.org/sites/default/files/2018-06/msf_forced-to-flee-central-americas-northern-triangle.pdf.

19 ¹⁵ See U.S. Immigration & Customs Enf't, Dep't of Homeland Sec., *Deportation of*
20 *Aliens Claiming U.S.-Born Children*, at 6 (Oct. 12, 2017),
21 <https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.%20-Born%20Children%20-%20First%20Half%2C%20CY%202017.pdf>; U.S.
22 Immigration & Customs Enf't, Dep't of Homeland Sec., *Deportation of Aliens*
23 *Claiming U.S.-Born Children*, at 6 (June 26, 2018),
24 <https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Deportation%20of%20Aliens%20Claiming%20U.S.%20-Born%20Children%20-%20Second%20Half%2C%20CY%202017.pdf>.

25 ¹⁶ *Profile of the Unauthorized Population: United States*, Migration Policy Institute
26 <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US#yearsresidence>.

27 ¹⁷ Profiling Who ICE Detains—Few Committed Any Crime, TRAC Immigration
28 (Oct. 9, 2018), <https://trac.syr.edu/immigration/reports/530/>.

1 proportion—four out of five—either had no record or had only committed a minor
2 offense such as a traffic violation.¹⁸

3 142. Most individuals in ICE custody also do not speak English and
4 therefore require interpreters, translators, or related technology to ensure that they
5 can communicate with facility staff—including medical providers—and their
6 immigration attorneys. Yet, ICE’s systemic failure to ensure that Detention
7 Facilities consistently provide adequate interpretation services means that detained
8 individuals are routinely unable to communicate with facility staff and their
9 attorneys.¹⁹

10 143. It is estimated that between October 2010 and February 2013, the U.S.
11 detained approximately 6,000 survivors of torture that were seeking asylum.²⁰
12 Based on the increased number of individuals who are currently being detained, it is
13 likely that the number of survivors of torture who are detained has substantially
14 increased since then.

15 144. Between 2013 and 2018, the United States deported at least 92
16 veterans of the U.S. armed services.²¹ From the data available, the U.S.
17 Government Accountability Office (“GAO”) also identified 250 noncitizen veterans
18 who were put in removal proceedings during this same time period.²²

20 ¹⁸ *Id.*

21 ¹⁹ *See, e.g.,* Xavier Becerra, Cal. Att’y Gen., *Immigration Detention in California*,
22 Cal. Dep’t of Justice, at 61, 82, 123 (Feb. 2019),
23 <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

24 ²⁰ *Tortured & Detained: Survivor Stories of U.S. Immigration Detention*, The
25 Center for Victims of Torture et al., at 5 (Nov. 2013),
26 https://www.uusc.org/sites/default/files/report_torturedanddetained_nov2013.pdf.

27 ²¹ U.S. Gov’t Accountability Office, GAO-19-416, *Actions Needed to Better*
28 *Handle, Identify, and Track Cases Involving Veterans*, at 16 (June 2019)
<https://www.gao.gov/assets/700/699549.pdf>.

²² *Id.*

145. Immigration proceedings are civil matters, and immigration detention is likewise civil and therefore should be “nonpunitive” in nature.²³ Accordingly, because neither Plaintiffs nor putative Class members are detained pursuant to criminal charges or convictions, the conditions in which they are held must reflect that distinct custody status and must not be similar to, or worse than, the conditions of confinement in jails and prisons.

146. In practice, however, individuals in immigration detention are held in punitive conditions that are similar to, and sometimes worse than, conditions of confinement in prisons and jails.

147. When the core standards governing detention in federal facilities were promulgated in January 2000, the U.S. Department of Justice allowed the core standards for immigration detention facilities to be the same as those governing the U.S. Bureau of Prisons.²⁴ Likewise, ICE’s current national standards governing immigration prisons were promulgated in cooperation with the American Correctional Association (“ACA”).²⁵

148. Consistent with ICE’s history of relying upon a prison model for operating its facilities, most Detention Facilities are built and operated like correctional institutions—and many of them are, in fact, currently operative penal institutions.²⁶ They are ringed by chain link fences topped with barbed wire, and visitation is substantially restricted. Correctional officers strictly control movement

²³ See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

²⁴ Office of the Federal Detention Trustee, *Detention Standards & Compliance Division: History of the Federal Performance-Based Detention Standards*, <https://www.justice.gov/archive/ofdt/qap-brochure.pdf>.

²⁵ *Facility Inspections*, ICE, <https://www.ice.gov/facility-inspections>.

²⁶ See, e.g., Sarah N. Lynch et al., *Exclusive: U.S. Sending 1,600 Immigration Detainees to Federal Prisons*, Reuters (June 7, 2018), <https://www.reuters.com/article/us-usa-immigration-prisons-exclusive/exclusive-u-s-immigration-authorities-sending-1600-detainees-to-federal-prisons-idUSKCN1J32W1>; Tallahatchie County Correctional Facility, CoreCivic, <http://www.corecivic.com/facilities/tallahatchie-county-correctional-facility>.

1 within the facilities and conduct “counts” up to ten times a day, during which all
 2 movement is prohibited. Detained individuals, who are denied access to their
 3 personal clothing and most possessions, are dressed in prison garb and often held in
 4 large cells with up to 100 others for most of the day. Generally, they are allowed
 5 only a few hours of access to fresh air and sunlight each week; detained individuals
 6 in some facilities are entirely denied access to the outdoors, and pass months or
 7 years without ever feeling the sun on their faces.

8 149. When detained individuals are transported outside of the facilities,
 9 corrections officers fully shackle their ankles and wrists. While some detained
 10 individuals are offered the “opportunity” to work, they earn only about a dollar a
 11 day, and reprisals for refusal to work are also common.²⁷ Corrections officers use
 12 solitary confinement as punishment for disciplinary infractions both real and
 13 pretextual, often without processes to determine which is which.

14 150. Facility conditions make communication between detained individuals
 15 and the outside world incredibly difficult—and often effectively impossible. When
 16 visited by family and friends during limited visitation hours, detained individuals
 17 are often denied contact visitation and must communicate with their loved ones
 18 through thick plexiglass.

19 151. Detention Facilities also routinely obstruct detained individuals from
 20 meaningfully communicating with their attorneys.²⁸ Contact visitation between

21
 22 ²⁷ See generally e.g., *Menocal v. GEO Grp., Inc.*, 882 F.3d 905 (10th Cir. 2018);
 23 *Chao Chen v. Geo Grp., Inc.*, 287 F. Supp. 3d 1158 (W.D. Wash. 2017); *Novoa v.*
 24 *GEO Grp., Inc.*, No. EDCV 17-2514 JGB (SHKx), 2018 WL 4057814 (C.D. Cal.
 25 Aug. 22, 2018); *Barrientos v. CoreCivic, Inc.*, 332 F. Supp. 3d 1305 (M.D. Ga.
 26 2018); *Gonzalez v. CoreCivic, Inc.*, No. 17-CV-2573 JLS (NLS), 2018 WL
 27 1172579 (S.D. Cal. Mar. 6, 2018); *Owino v. CoreCivic, Inc.*, No. 17-CV-1112 JLS
 28 (NLS), 2018 WL 2193644 (S.D. Cal. May 14, 2018).

²⁸ See, e.g., Becerra, *supra* note 19, at 125–27; U.S. Comm’n on Civil Rights, *With Liberty and Justice for All*, at 112 (Sep. 2015), https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf.

1 attorneys and clients is commonly denied, and access to confidential legal phones
2 and interpretation services is lacking on a systemic scale. Non-confidential phone
3 access is provided by private prison phone companies that charge exorbitant rates.²⁹
4 Facility staff screen detained individuals' mail³⁰ and deny them access to almost all
5 their possessions.³¹ Communication is made nearly impossible when Defendants
6 fail to provide appropriate accommodations to individuals with disabilities who rely
7 on assistive devices and other aids for effective communication.

8 152. Multiple reports have concluded that immigration detainees are subject
9 to prison-like conditions of confinement. For example, the U.S. Commission on
10 Civil Rights issued a report in September 2015 concluding that: (1) "it was apparent
11 that immigration detention centers were built, house detainees, and operate like
12 criminal penitentiaries;"³² and (2) "the Commission finds evidence indicating that
13 DHS and its component agencies and contractees detain undocumented immigrants
14 in a manner inconsistent with civil detention and instead detain many
15 undocumented immigrants like their criminal counterparts in violation of a detained
16 immigrant's Fifth Amendment Rights."³³

17 153. Similarly, in February 2019, the California Department of Justice
18 published the findings of its review of all ten Detention Facilities in California.³⁴
19 Overall, the review found that detained individuals often face highly restrictive and
20

21 ²⁹ Leticia Miranda, *Dialing with Dollars: How County Jails Profit From Immigrant*
22 *Detainees*, The Nation (May 15, 2014), [https://www.thenation.com/article/dialing-](https://www.thenation.com/article/dialing-dollars-how-county-jails-profit-immigrant-detainees/)
23 [dollars-how-county-jails-profit-immigrant-detainees/](https://www.thenation.com/article/dialing-dollars-how-county-jails-profit-immigrant-detainees/).

24 ³⁰ See ICE, 2011 Performance-Based National Detention Standards (revised 2016),
25 at § 5.1.

26 ³¹ See ICE, 2011 Performance-Based National Detention Standards (revised 2016),
27 at § 2.5.

28 ³² U.S. Comm'n on Civil Rights, *With Liberty and Justice for All*, at 95–96 (Sep.
2015), https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf.

³³ *Id.* at 106.

³⁴ Becerra, *supra* note 19, at ii.

1 prison-like settings, including wearing prison-style clothing, spending up to 22
 2 hours a day in their cells, facing restrictions on communicating with counsel,
 3 receiving inadequate medical and mental health care, and performing work for
 4 which they are often unpaid or compensated at \$1.00 a day.³⁵

5 154. In a March 2019 report, Disability Rights California (“DRC”) found
 6 that Adelanto holds detained individuals in punitive, prison-like conditions that
 7 harm people with disabilities, that “are obvious from the moment one enters the
 8 detention center complex,” and that “amount to the unnecessary and possibly
 9 unlawful punishment of civil detainees.”³⁶ The facility, part of which was originally
 10 constructed to be a prison and which operated as one for many years, is:

11 infused with unnecessarily harsh—and in effect, punitive—conditions,
 12 raising questions as to whether ICE and GEO Group are violating the
 13 constitutional rights of the people held there as civil detainees. Adelanto
 14 looks, feels and operates like a prison, from the extreme idleness and
 15 regimented daily schedule to the use of solitary confinement-type
 16 housing The facility’s prison-like conditions disproportionately harm
 17 people with mental illness and other disabilities.³⁷

18 155. Denial of medical care, mental health care, and disability
 19 accommodations contributes to and exacerbates the punitive conditions in
 20 Defendants’ Detention Facilities. Indeed, as detailed herein, Plaintiffs and the Class
 21 are routinely denied access to crucial medical and mental health care, refused
 22 necessary accommodations for their disabilities, and subjected to near-constant
 23 isolation. Viewed in their totality, these brutal conditions and punitive practices
 24

25 ³⁵ *Id.* at iii–iv, 78, 122–27.

26 ³⁶ Disability Rights Cal., *There Is No Safety Here*, at 17 (Mar. 2019),
 27 [https://www.disabilityrightsca.org/system/files/file-](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)
 28 [attachments/DRC_REPORT_ADELANTO-](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf)
[IMMIG_DETENTION_MARCH2019.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf).

³⁷ *Id.* at 2 (emphasis in original).

1 evince that conditions in the Detention Facilities are indistinguishable from—and
 2 often worse than—jails and prisons.

3 156. Notwithstanding ICE’s regulatory and statutory authority to release
 4 detained individuals, Defendants’ knowledge of the inadequate and inhumane
 5 conditions in Detention Facilities, and the availability of multiple cost-effective
 6 alternatives to detention, Defendants choose to detain thousands of individuals
 7 every year—knowing that they are unable to provide the minimum level of care and
 8 accommodations required by the Constitution and federal law. For example,
 9 8 C.F.R. § 212.5 gives ICE the authority to parole asylum seekers who have
 10 presented themselves at a port of entry into the U.S. during the pendency of their
 11 asylum hearings. In fact, 8 C.F.R. § 212.5(b)(1) specifically authorizes release for
 12 those with serious medical conditions. Another regulatory subdivision likewise
 13 authorizes the release of pregnant women. 8 C.F.R. § 212.5(b)(2). ICE policy
 14 directives also authorize parole for those asylum seekers who have passed the
 15 “Credible Fear Interview,” a mechanism by which DHS filters out non-meritorious
 16 asylum claims.³⁸ Despite authorization to use its parole power, ICE now does so
 17 only in a “negligible” number of cases.³⁹ To provide but one example, although
 18 approximately 90 percent of asylum seekers processed in New Orleans were
 19 previously granted parole, parole was granted in just two of 130 cases in 2018.⁴⁰

22 ³⁸ U.S. Immigration & Customs Enf’t, *Directive No. 11002.1, Parole of Arriving*
 23 *Aliens Found to Have a Credible Fear of Persecution or Torture*, at ¶ 6.2 (Jan. 4,
 24 2010), [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf)
[parole_of_arriving_alien_found_credible_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).

25 ³⁹ *Damus v. Nielsen*, 313 F. Supp. 3d 317, 330 (D.D.C. 2018).

26 ⁴⁰ Southern Poverty Law Center, *SPLC Lawsuit: ICE Illegally Denying Parole to*
 27 *Asylum Seekers in Southeast* (May 30, 2019),
 28 [https://www.splcenter.org/news/2019/05/30/splc-lawsuit-ice-illegally-denying-](https://www.splcenter.org/news/2019/05/30/splc-lawsuit-ice-illegally-denying-parole-asylum-seekers-southeast)
[parole-asylum-seekers-southeast](https://www.splcenter.org/news/2019/05/30/splc-lawsuit-ice-illegally-denying-parole-asylum-seekers-southeast).

157. For many other detained individuals who have not presented themselves at a port of entry, 8 C.F.R. § 1236.1(d)(1) authorizes ICE to set a bond for those it apprehends. However, upon information and belief, ICE rarely sets bond for detained individuals and has been instructed, as of February 20, 2017, to not use its discretion to deprioritize any classes of people—even people who are pregnant, elderly, or disabled—from detention.⁴¹

158. ICE contends that detention is necessary to ensure appearance for court hearings, but a 2014 GAO report found that 99 percent of individuals in an intensive monitoring appearance program appeared in court.⁴² Another study found that community-based alternatives to detention program achieved a compliance rate of 90 percent or better.⁴³ Instead of using those programs, or using its prosecutorial

⁴¹ *Compare* Memorandum from Jeh Charles Johnson, Sec’y of Homeland Sec., to Thomas S. Winkowski, Acting Dir., U.S. Immigration & Customs Enf’t, et al. (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf (DHS directing that, as a general matter, ICE should not detain individuals “who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest”) *with* Memorandum from John Kelly, Sec’y of Homeland Sec., to Thomas D. Homan, Acting Dir., U.S. Immigration & Customs Enf’t, et al. (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (explicitly rescinding November 20, 2014 Memorandum and providing that “[e]xcept as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws”).

⁴² U.S. Gov’t Accountability Office, GAO-15-26, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, at 2 (Nov. 2014), <https://www.gao.gov/assets/670/666911.pdf>.

⁴³ National Immigrant Justice Center, *A Better Way: Community-Based Programming as an Alternative To Immigrant Incarceration*, at 4 (Apr. 2019),

1 discretion to decline to initiate removal proceedings against vulnerable populations
 2 as it had before February 2017, ICE insists on detaining people with serious
 3 illnesses and disabilities despite its inability to provide them adequate care and
 4 accommodation.

5 **IV. Defendants are Responsible for Selecting, Contracting, and Monitoring**
 6 **Conditions in Detention Facilities.**

7 159. Defendants utilize a centralized process to identify and enter into
 8 contracts with private and public entities to detain individuals in their custody; to
 9 administer those contracts; and to determine what, if any, actions will be taken
 10 against contractors who provide substandard care.

11 160. These contracts are administered and managed by ICE's Office of
 12 Acquisitions Management via a process that ICE has centralized "in order to
 13 aggressively enforce contract compliance and initiate new procurements."⁴⁴ ICE's
 14 Office of Acquisitions Management contracting officers have signature authority to
 15 execute and modify contracts, and they appoint Contract Officers' Representatives
 16 ("CORs").⁴⁵ When facilities are found noncompliant, CORs may submit a Contract
 17 Discrepancy Report that documents the issue and recommends financial penalties.

18 161. In procuring space in facilities for its detainees, ICE does not use any
 19 of the three lawful procurement means available to federal agencies.⁴⁶ Instead, it

20 [https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-](https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf)
 21 [type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf](https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf).

22 ⁴⁴ *Detention Reform*, U.S. Immigration & Customs Enf't,
<https://www.ice.gov/detention-reform#tab1> (last updated Jul. 24, 2018).

23 ⁴⁵ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-19-18: ICE Does*
 24 *Not Fully Use Contracting Tools to Hold Detention Facility Contractors*
Accountable for Failing to Meet Performance Standards, at 5 (Jan. 29, 2019),
 25 <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

26 ⁴⁶ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-18-55: Immigration*
 27 *and Customs Enforcement Did Not Follow Federal Procurement Guidelines When*
Contracting for Detention Services, at 19 (Feb. 21, 2018),
 28 <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>.

1 most commonly uses Intergovernmental Service Agreements (“IGSAs”) with local
 2 entities who then contract with private prison companies to operate the facilities.⁴⁷
 3 In 2018, the DHS Office of the Inspector General (“OIG”) found that “ICE has no
 4 assurance that it executed detention center contracts in the best interest of the
 5 Federal Government, taxpayers, or detainees.”⁴⁸ In particular, this 2018 OIG Report
 6 found that ICE had intentionally circumvented the federal procurement process to
 7 render the private prison company’s performance “effectively insulated from
 8 government scrutiny.”⁴⁹

9 162. In 2019, OIG found that Defendants fail to thoroughly vet programs
 10 and services at Detention Facilities, use lax procurement requirements, and enter
 11 into vague and toothless contracts, as described below.⁵⁰ Thus, Defendants’ failure
 12 to properly monitor Detention Facilities begins with the very contracts intended to
 13 govern the conditions in which non-citizens are detained.

14 163. In the fall of 2016, Assistant Attorney General Sally Yates directed the
 15 U.S. Department of Justice to begin to phase out the use of private prisons for
 16 federal prisoners, based in part on a recognition that conditions in privately run
 17 facilities were substandard.⁵¹

18 164. Shortly thereafter, then-Secretary of DHS Jeh Johnson established a
 19 Subcommittee at DHS to consider whether DHS should follow suit. While
 20 acknowledging that the use of private providers and local jails was likely to
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22 ⁴⁷ *Id.*; see also 2 C.F.R. § 200; 48 C.F.R. § 1.

23 ⁴⁸ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-55*, *supra* note
 24 46, at 3.

⁴⁹ *Id.* at 6.

25 ⁵⁰ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-19-18*, *supra* note
 26 4546, at 15.

27 ⁵¹ Memorandum from Sally Yates, Deputy Att’y Gen, to the Acting Dir. of the Fed.
 28 Bureau of Prisons, at 1-2 (Aug. 18, 2016),
<https://www.justice.gov/archives/opa/file/886311/download>

1 continue, the Subcommittee, in a report issued in December 2016, offered multiple
 2 recommendations, including that DHS expand its oversight over such facilities,
 3 improve the quality and quantity of inspections at facilities, and initiate
 4 unannounced inspections.⁵² Significantly, the Subcommittee recommended shifting
 5 away from privately provided healthcare toward ICE-Health-Service-Corps-
 6 provided healthcare at ICE facilities for cost and quality reasons.⁵³

7 165. On information and belief, under this Administration, DHS has heeded
 8 none of the Subcommittee's recommendations, and has instead dramatically
 9 expanded the use and scope of private and county contractors. For example, IHSC
 10 provides direct care to approximately 13,500 detained persons, the same as when
 11 DHS made its recommendation in 2016, despite a marked increase in the detained
 12 population since then.⁵⁴

13 166. Instead, ICE has expanded its use of private prison corporations with
 14 histories of negligence and abuse, such as GEO and CoreCivic.⁵⁵

15 167. GEO, ICE's most frequently used contractor, has repeatedly failed to
 16 provide adequate care. In 2012, 26 members of Congress requested an investigation
 17 of the GEO-operated Broward Transitional Center in Florida after receiving reports
 18

19 ⁵² Homeland Security Advisory Council, U.S. Dep't of Homeland Sec., *Report of*
 20 *the Subcommittee on Privatized Immigration Detention Facilities*, at 3 (Dec. 1,
 21 2016),
 22 [https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20](https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf)
[Final%20Report.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf).

⁵³ *Id.* at 2.

23 ⁵⁴ *Compare id.* at 10 with *ICE Health Service Corps*, U.S. Immigration & Customs
 24 Enf't (Last Updated: February 26, 2019), [https://www.ice.gov/features/health-](https://www.ice.gov/features/health-service-corps)
[service-corps](https://www.ice.gov/features/health-service-corps).

25 ⁵⁵ *The GEO Group Inc (GEO) Q1 2019 Earnings Call Transcript*, Yahoo Finance
 26 (Apr. 30, 2019), [https://finance.yahoo.com/news/geo-group-inc-geo-q1-](https://finance.yahoo.com/news/geo-group-inc-geo-q1-223554152.html)
 27 [223554152.html](https://finance.yahoo.com/news/geo-group-inc-geo-q1-223554152.html); Justin Rohrllich, *As US communities resist ICE, private prison*
 28 *companies are cashing in*, Quartz (Apr. 9, 2019), [https://qz.com/1586161/private-](https://qz.com/1586161/private-prisons-make-big-profits-from-ice/)
[prisons-make-big-profits-from-ice/](https://qz.com/1586161/private-prisons-make-big-profits-from-ice/).

1 of inadequate medical care for detained immigrants.⁵⁶ The same year, the
 2 Department of Justice found “systematic, egregious, and dangerous practices,”
 3 including inadequate medical care, at a GEO facility in Mississippi.⁵⁷ At another
 4 GEO facility in Pennsylvania, seven people died in less than two years, with several
 5 deaths resulting in lawsuits alleging that the facility failed to provide adequate
 6 medical care.⁵⁸ In 2011, GEO was held civilly liable in a wrongful death action
 7 brought by the estate of an inmate at a GEO facility in Oklahoma.⁵⁹ There are
 8 dozens more suits that have been filed against GEO, ranging from allegations of
 9 inmate death to abuse to medical neglect, many of which were settled before trial.⁶⁰
 10 In the past year, both OIG- and state-contracted disability monitor Disability Rights
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 12
 13

14 ⁵⁶ Letter from Christina Fialho, Co-Founder & Exec. Dir. of Cmty. Initiatives for
 15 Visiting Immigrants in Confinement to Karen Tandy, Subcomm. Chair of
 16 Privatized Immigration Det, Facilities Subcomm. (Oct. 3, 2016),
 17 [https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20](https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf)
[Final%20Report.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf).

18 ⁵⁷ Dep’t of Justice: Civil Rights Div., *Investigation of the Walnut Grove Youth*
 19 *Correctional Facility* at 20–33 (Mar. 20, 2012),
 20 <http://www.justice.gov/crt/about/spl/documents/walnutgrovefl.pdf>.

21 ⁵⁸ Alex Rose, *A changing of the guard at county prison*, Daily Times News, (Jan. 4,
 22 2009), [http://www.delcotimes.com/general-news/20090104/a-changing-of-the-](http://www.delcotimes.com/general-news/20090104/a-changing-of-the-guard-at-county-prison)
[guard-at-county-prison](http://www.delcotimes.com/general-news/20090104/a-changing-of-the-guard-at-county-prison).

23 ⁵⁹ The GEO Group, Inc., Annual Report (Form 10-K) (Mar. 1, 2013),
 24 [https://www.sec.gov/Archives/edgar/data/923796/000119312513087892/d493925d](https://www.sec.gov/Archives/edgar/data/923796/000119312513087892/d493925d10k.htm#tx493925_21)
[10k.htm#tx493925_21](https://www.sec.gov/Archives/edgar/data/923796/000119312513087892/d493925d10k.htm#tx493925_21).

25 ⁶⁰ *Private Corrections Working Group/Private Corrections Institute: List of GEO*
 26 *Group Lawsuits*, PR Watch (Sep. 26, 2013)
 27 [https://www.prwatch.org/news/2013/09/12255/violence-abuse-and-death-profit-](https://www.prwatch.org/news/2013/09/12255/violence-abuse-and-death-profit-prisons-geo-group-rap-sheet)
[prisons-geo-group-rap-sheet](https://www.prwatch.org/news/2013/09/12255/violence-abuse-and-death-profit-prisons-geo-group-rap-sheet); *GEO Group/GEO Care Rapsheet*, Private Corrections
 28 Working Group, https://www.privateci.org/rap_geo.html; *GEO Group*, Project on
 Government Oversight,
<https://www.contractormisconduct.org/contractors/253/geo-group>.

1 California reported widespread lack of medical care and disability accommodation
2 at the GEO-run Adelanto.⁶¹

3 168. ICE's other main contractor, CoreCivic, has a similar history of
4 refusing to provide adequate medical treatment to those it detains.⁶² However,
5 despite knowing the inherent risks of contracting with private prison corporations,
6 ICE continues to entrust them with the care of an ever-growing number of detained
7 individuals.

8 169. ICE's choice of medical service contractors is similarly disturbing. For
9 example, ICE frequently contracts with private medical provider Correct Care
10 Solutions ("CCS"), now rebranded as Wellpath, even though the company has been
11 sued at least 1,395 times over the last decade. Upon information and belief,
12 individuals in ICE custody also receive medical care from Corizon, another private
13 prison healthcare provider. Corizon has been sued over 1,000 times in the past five
14 years.⁶³ In June 2018, the United States District Court for the District of Arizona
15 sanctioned the Arizona Department of Corrections nearly \$1.5 million for, among
16 other things, continuing to contract with Corizon, "which has been unable to meet
17 the prisoner's health care needs," and for "pa[y]ing them more and reward[ing]

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19 ⁶¹ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-18-86: Management*
20 *Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto,*
21 *California*, at 9 (Sep.27, 2018),
<https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>;
22 Disability Rights Cal., *supra* note 36, at 4.

23 ⁶² See, e.g., *Grae v. Corr. Corp. of Am.*, No. 3:16-CV-2267, 2019 WL 1399600, at
24 *2 (M.D. Tenn. Mar. 26, 2019) (shareholder class certified alleging CoreCivic's
25 "failure to provide sufficient medical services to its inmates."); *Dodson v.*
26 *CoreCivic*, No. 3:17-CV-00048, 2018 WL 4800836, at *1 (M.D. Tenn. Oct. 3,
2018) (alleging deliberate inference to prisoners medical needs); *Pierce v. D.C.*,
128 F. Supp. 3d 250, 284 (D.D.C. 2015) (finding prisoner's ADA and Section 504
rights violated at CoreCivic facility).

27 ⁶³ *The Jail Health-Care Crisis*, The New Yorker (Feb. 25, 2019),
28 <https://www.newyorker.com/magazine/2019/03/04/the-jail-health-care-crisis>.

1 them with financial incentives while limiting the financial penalties for non-
 2 compliance.”⁶⁴ Further, in May 2019, Corizon entered into a consent decree to pay
 3 \$950,000 to individuals in a case in which the Equal Employment Opportunity
 4 Commission alleged that Corizon had discriminated against its disabled
 5 employees.⁶⁵ Despite other prison systems such as the New Mexico, Indiana,
 6 Arizona, and Nebraska Departments of Correction terminating contracts with CCS
 7 and Corizon because of safety concerns, both companies continue to provide care to
 8 ICE detainees.⁶⁶

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12 ⁶⁴ *Parsons v. Ryan*, No. CV-12-0601-PHX-DKD, 2018 WL 3239691, at *11 (D.
 13 Ariz. June 22, 2018).

14 ⁶⁵ *Corizon Health / Corizon LLC to Pay \$950,000 to Settle Nationwide EEOC*
 15 *Disability Discrimination Lawsuit*, U.S. Equal Opportunity Employment
 16 Commission (May 16, 2019), <https://www1.eeoc.gov/eeoc/newsroom/release/5-13-19b.cfm>.

17 ⁶⁶ *Amid safety concerns, company ending medical services contract for Tecumseh*
 18 *State Prison*, Omaha World Herald (Jun. 3, 2017),
 19 [https://www.omaha.com/news/nebraska/amid-safety-concerns-company-ending-](https://www.omaha.com/news/nebraska/amid-safety-concerns-company-ending-medical-services-contract-for-tecumseh/article_17e8e24e-479e-11e7-95a7-af05ec215c6f.html)
 20 [medical-services-contract-for-tecumseh/article_17e8e24e-479e-11e7-95a7-](https://www.omaha.com/news/nebraska/amid-safety-concerns-company-ending-medical-services-contract-for-tecumseh/article_17e8e24e-479e-11e7-95a7-af05ec215c6f.html)
 21 [af05ec215c6f.html](https://www.omaha.com/news/nebraska/amid-safety-concerns-company-ending-medical-services-contract-for-tecumseh/article_17e8e24e-479e-11e7-95a7-af05ec215c6f.html); *Numerous Lawsuits Filed Against Corizon Nationwide;*
 22 *Company Loses Contracts*, Prison Legal News (Aug. 30, 2017),
 23 [https://www.prisonlegalnews.org/news/2017/aug/30/numerous-lawsuits-filed-](https://www.prisonlegalnews.org/news/2017/aug/30/numerous-lawsuits-filed-against-corizon-nationwide-company-loses-contracts/)
 24 [against-corizon-nationwide-company-loses-contracts/](https://www.prisonlegalnews.org/news/2017/aug/30/numerous-lawsuits-filed-against-corizon-nationwide-company-loses-contracts/); *Corizon, the Prison*
 25 *Healthcare Giant, Stumbles Again*, The Appeal (February 8, 2019),
 26 <https://theappeal.org/corizon-the-prison-healthcare-giant-stumbles-again/>; *City*
 27 *Officials Defend Contract to House ICE Detainees at Henderson Detention Center*,
 28 *Las Vegas Review Journal* (May 8, 2017),
[https://www.reviewjournal.com/crime/city-officials-defend-contract-to-house-ice-](https://www.reviewjournal.com/crime/city-officials-defend-contract-to-house-ice-detainees-at-henderson-detention-center/)
[detainees-at-henderson-detention-center/](https://www.reviewjournal.com/crime/city-officials-defend-contract-to-house-ice-detainees-at-henderson-detention-center/); *Leading For-Profit Prison and*
Immigration Detention Medical Company Sued At Least 1,395 Times, Project on
 Government Oversight (Oct. 29, 2018),
[https://www.pogo.org/investigation/2018/10/leading-for-profit-prison-and-](https://www.pogo.org/investigation/2018/10/leading-for-profit-prison-and-immigration-detention-medical-company-sued-at-least-1-395-times/)
[immigration-detention-medical-company-sued-at-least-1-395-times/](https://www.pogo.org/investigation/2018/10/leading-for-profit-prison-and-immigration-detention-medical-company-sued-at-least-1-395-times/).

V. Multiple Government Entities, Including DHS Itself, Have Concluded That Defendants Are Not Adequately Monitoring and Overseeing Detention Facilities.

170. Defendants divide responsibility for monitoring Detention Facilities between government employees and private contractors. There is no independent oversight, inasmuch as all entities that conduct inspections are paid and vetted—either as contractors or as direct employees—by DHS.⁶⁷

171. Enforcement and Removal Operations, the branch of ICE responsible for apprehending and deporting noncitizens, is responsible for overseeing confinement across its facilities. Nearly a quarter of Detention Facilities are smaller jails that were permitted to conduct their own unregulated “self-assessments.”⁶⁸

172. ICE’s Custody Management Division (“CMD”) contracts with inspectors to conduct routine inspections of Detention Facilities, assess compliance with ICE detention standards, and develop corrective actions plans. OMD also oversees the on-site Detention Monitoring Program and operates the Detention Reporting and Information Line, which detained individuals and others can use to file complaints.⁶⁹

173. The DHS Office of Inspector General, DHS Office of Civil Rights and Civil Liberties (“CRCL”), and ICE Office of Detention Oversight (“ODO”) are also responsible for conducting inspections to ensure compliance with detention

⁶⁷ *Lives In Peril: How Ineffective Inspections Make ICE Complicit In Detention Center Abuse*, National Immigrant Justice Center (October 22, 2015), <https://www.immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-licit-detention-center-abuse-0>.

⁶⁸ *Dear ICE: Congress Is Watching, And So Are We*, National Immigrant Justice Center (April 5, 2018), <https://immigrantjustice.org/staff/blog/dear-ice-congress-watching-and-so-are-we>.

⁶⁹ U.S. Gov’t Accountability Office, *GAO-16-231: Immigration Detention-Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care*, at 11 (Feb. 2016), <https://www.gao.gov/assets/680/675758.pdf>.

standards and applicable law.⁷⁰ ODO and ICE's External Reviews and Analysis Unit are also responsible for conducting a Detainee Death Review ("DDR") after a detained individual dies.⁷¹

174. The ICE Health Service Corps oversees administration, investigates detainee complaints related to health care, and manages medical payment authorizations for detainee care inspection of medical care at all Detention Facilities.⁷² IHSC also monitors and conducts inspections at all facilities, including those in which health care is provided by a contractor.⁵²

175. Finally, ICE has also created a Detention Monitoring Council ("DMC"), comprised of ICE senior leadership, that is supposed to meet regularly to review problems uncovered by the internal or external oversight entities.⁷³ In addition, the DMC supposedly meets immediately after any detained individual's death or other critical incident.⁷⁴

176. Though responsibility for conditions compliance is shared by the above DHS offices, Defendants primarily rely on periodic detention center inspections performed by a private company, Nakamoto, with which CMD

⁷⁰ *Id.*

⁷¹ See e.g., Office of Professional Responsibility, *Detainee Death Review – Sergio Alonso Lopez*, at 1 ("Sergio Alonso Lopez DDR"), <https://www.ice.gov/doclib/foia/reports/ddrLopez.pdf>; Office of Professional Responsibility, *Detainee Death Review – Moises Tino Lopez*, at 1 ("Moises Tino Lopez DDR"), <https://www.ice.gov/doclib/foia/reports/ddr-Tino.pdf>.

⁷² U.S. Gov't Accountability Office, *GAO-16-231*, *supra* note 69, at 11.

⁷³ *Holiday on ICE: The U.S. Dep't of Homeland Sec.'s New Immigration Detention Standards Before the Subcomm. on Immigration Policy & Enf't, H. Comm. on the Judiciary*, 112th Cong. 112-104 (2012) (Statement Of Kevin Landy, Assistant Dir. Office of Det. Policy & Planning, U.S. Immigration And Customs Enf't.), https://archive.org/stream/gov.gpo.fdsys.CHRG-112hhr73543/CHRG-112hhr73543_djvu.txt.

⁷⁴ *Id.*

1 contracts. Nakamoto annually or biennially inspects facilities that hold ICE
2 detainees more than 72 hours.⁷⁵

3 177. Both GAO and OIG have repeatedly expressed concern over major
4 structural deficiencies in ICE's contract and oversight system. In 2016, GAO found
5 that it is unclear whether IHSC's data tracking system "will capture all medical
6 complaints received by DHS or facilitate analyses of complaints over time and
7 across facilities" and that, because of a lack of resources allocated, "ICE does not
8 utilize the data gathered . . . in a way that examines overall trends in medical care
9 deficiencies."⁷⁶ The GAO observed that under CMD's monitoring scheme, a
10 facility may be found deficient as to individual systemic medical provision criteria,
11 but still be found compliant with the overall relevant medical care standard.⁷⁷ At
12 smaller facilities, ICE does no systematic analysis of inspection reports.⁷⁸ Nor does
13 ICE perform or have any plans to perform any type of analysis on complaints
14 received by ODO, CRCL, and IHSC.⁷⁹

15 178. Likewise, in 2018, OIG found major deficiencies in ICE's external and
16 internal monitoring mechanisms.⁸⁰ The OIG report included a telling recitation of
17 the long-standing deficiencies in Defendants' monitoring practices:

18 ICE's difficulties with monitoring and enforcing compliance
19 with detention standards stretch back many years and continue
20 today. In 2006, [OIG] identified issues related to ICE Detention

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22 ⁷⁵ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-18-47: ICE's*
23 *Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained*
24 *Compliance or Systemic Improvements*, at 2 (Jun. 26, 2018),
<https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

⁷⁶ U.S. Gov't Accountability Office, *GAO-16-231*, *supra* note 69, at 26.

⁷⁷ *Id.* at 21–22.

⁷⁸ *Id.* at 27.

⁷⁹ *Id.* at 26–27

27 ⁸⁰ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-18-47*, *supra* note
28 75, at 5–10.

1 Facility inspections and implementation of corrective actions. In
2 our 2006 report, we recommended that ICE “improve the
3 inspection process and ensure that all non-compliance
4 deficiencies are identified and corrected.” In a December 2017
5 report, which related to OIG’s unannounced inspections of five
6 Detention Facilities, we identified problems in some of the same
7 areas noted in the 2006 report.⁸¹

8 179. Specifically, OIG found the Nakamoto inspections deficient because:
9 (1) inspections required too much work for such small teams to complete over a
10 short period of time; (2) some inspections were not thorough; (3) instead of
11 interviewing detained individuals privately in a confidential area, the inspectors
12 mostly held group conversations in the presence of Detention Facility personnel,
13 and conducted the interviews only in English without any interpreters;
14 (4) Nakamoto’s inspection reports contained inaccuracies; and (5) ICE did not
15 perform any quality assurance visits to assess Nakamoto’s performance.⁸²

16 180. The 2018 OIG report also found that Nakamoto’s inspectors did not
17 follow inspection protocols and misrepresented information in final inspection
18 reports.⁸³ OIG detailed how some inspectors relied on brief answers from staff
19 interviews and reviews of written policies to evaluate facility conditions, instead of
20 conducting personal observations as required.⁸⁴ Nakamoto inspectors also made
21 misrepresentations in their inspection reports that were inconsistent with OIG
22 observations during the same visit. At one facility, Nakamoto reported that detained
23 individuals understood how to get assistance from ICE officers and their case
24 managers, and that detained individuals also made positive comments about access
25

26 ⁸¹ *Id.*

27 ⁸² *Id.*

28 ⁸³ *Id.* at 5.

⁸⁴ *Id.* at 6–7.

1 to law library services and family visitation. In contrast, however, OIG inspectors
 2 noted that they “heard detainees tell inspectors they did not know the identity of
 3 their ICE deportation officer or how to contact the officer” and “did not observe
 4 inspectors asking any detainees about law library services or visiting
 5 opportunities.”⁸⁵ At another facility, inspectors reported that corrections officers
 6 “exhibited an understanding of the detention standards and civil detention” without
 7 having spoken to any such officers during the visit.⁸⁶

8 181. OIG also found that “[s]everal ICE employees in the field and
 9 managers at ICE ERO headquarters commented that Nakamoto inspectors ‘breeze
 10 by the standards’ and do not ‘have enough time to see if the [facility] is actually
 11 implementing the policies.’”⁸⁷ These employees and managers also described
 12 Nakamoto inspections as being “very, very, very difficult to fail.”⁸⁸ “One ICE ERO
 13 official suggested these inspections are ‘useless.’”⁸⁹ Further, at least some
 14 inspectors speak only to facility staff and English-speaking detained individuals,
 15 and some do not enter all areas of the facilities.⁹⁰ The OIG report also found that
 16 “all Nakamoto and ODO inspections are scheduled in advance and announced to
 17 the facilities, which, according to ICE field staff, allows facility management to
 18 temporarily modify practices to ‘pass’ an inspection.”⁹¹

19 182. Additionally, a 2016 Homeland Security Advisory Council report
 20 found Nakamoto’s inspections flawed because they “focus on quantitative
 21

22 ⁸⁵ *Id.* at 9.

23 ⁸⁶ *Id.* at 10.

24 ⁸⁷ *Id.* at 7.

25 ⁸⁸ *Id.*

26 ⁸⁹ *Id.* at 10.

27 ⁹⁰ *At Immigration Detention Facilities, 'Inspectors for Hire' Miss Signs of Neglect, Say Critics*, Yahoo News (Mar. 12, 2019), https://news.yahoo.com/at-immigration-detention-facilities-inspectors-for-hire-miss-signs-of-neglect-say-critics-090000015.html?soc_src=community&soc_trk=tw.

28 ⁹¹ *Id.*

1 measurement of inputs rather than qualitative inquiry.”⁹² That is, Nakamoto
 2 inspections use yes/no checklists, instead of reviewing the extent to and means by
 3 which facilities can improve compliance. Notably, none of the items in Nakamoto’s
 4 checklist requires review of disability access or accommodation.⁹³

5 183. As for inspections by ODO, the 2018 OIG report concluded that “these
 6 inspections are too infrequent to ensure the facilities implement all corrections.”⁹⁴
 7 Of the approximately 158 facilities that ICE monitors, ODO inspects only
 8 approximately 30 facilities each year.⁹⁵

9 184. The 2018 OIG report also identified problems with monitoring by
 10 ICE’s Detention Service Monitors (“DSMs”). First, DSMs are in place at only 52
 11 Detention Facilities. Second, “to correct instances of noncompliance, DSMs usually
 12 must rely on local ERO field office assistance”—and, in some instances, local ERO
 13 management was disengaged or reluctant to work with DSMs.”⁹⁶

14 185. In 2019, OIG issued a report summarizing unannounced inspections at
 15 Adelanto, Aurora, LaSalle, and Essex County Correctional Facility (“Essex
 16 County”). These inspections “revealed violations of ICE’s detention standards and
 17

18 ⁹² Homeland Sec. Advisory Council, U.S. Dep’t of Homeland Sec., *Report of the*
 19 *Subcommittee on Privatized Immigration Detention Facilities*, *supra* note 52, at 14.
 20 [https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20](https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf)
[Final%20Report.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf).

21 ⁹³ *See, e.g.*, Letter from Lead Compliance Inspector, The Nakamoto Grp., to
 22 Assistant Dir. for Detention Mgmt. (Oct. 11, 2018),
 23 [https://www.ice.gov/doclib/facilityInspections/adelantoEastCa_CL_10_11_2018.pd](https://www.ice.gov/doclib/facilityInspections/adelantoEastCa_CL_10_11_2018.pdf)
 24 [f](https://www.ice.gov/doclib/facilityInspections/adelantoEastCa_CL_10_11_2018.pdf); Letter from Lead Compliance Inspector, The Nakamoto Grp., to Assistant Dir.
 25 for Detention Mgmt. (May 3, 2018),
[https://www.ice.gov/doclib/facilityInspections/stewartDetCtrGA_CL_05_03_2018.](https://www.ice.gov/doclib/facilityInspections/stewartDetCtrGA_CL_05_03_2018.pdf)
[pdf](https://www.ice.gov/doclib/facilityInspections/stewartDetCtrGA_CL_05_03_2018.pdf).

26 ⁹⁴ Office of Inspector Gen., Dep’t of Homeland Sec., *OIG-18-47*, *supra* note 75, at
 27 4, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

28 ⁹⁵ *Id.* at 10.

⁹⁶ *Id.* at 14–15.

1 raised concerns about the environment in which detainees are held.”⁹⁷ The report
 2 recommended that ICE improve its oversight detention facility management and
 3 operations, and that “ICE could mitigate and resolve many of these issues through
 4 increased engagement and interaction with the facilities and their operations.”⁹⁸

5 186. ICE’s own officials have raised concerns related to monitoring. In a
 6 memo from December 2018, an ICE supervisor notified then Acting Deputy
 7 Director of ICE Matthew Albence that “IHSC is severely dysfunctional and
 8 unfortunately preventable harm and death to detainees has occurred . . . [and that]
 9 IHSC leadership is not focused on preventing horrible recurrences.”⁹⁹ According to
 10 the memo, IHSC officials fail to review reports of severe mental health disabilities
 11 representing a high risk of suicide.¹⁰⁰ The memo asserted that “many detainees have
 12 encountered preventable harm and death [and] IHSC leadership is not focused on
 13 preventing horrible recurrences.”¹⁰¹ The memo then went on to detail over a dozen
 14 cases in which detained individuals were not provided with proper medical and
 15 mental health care, including two that resulted in fatalities.¹⁰²

16 187. Nongovernmental organizations have also repeatedly identified the
 17 systemic problems with ICE’s inspection system. For example, a January 2018
 18 report by the Detention Watch Network and National Immigrant Justice Center
 19

20 ⁹⁷ Office of Inspector General, U.S. Dep’t of Homeland Sec., *OIG-19-47: Concerns*
 21 *About ICE Detainee Treatment and Care at Four Detention Facilities*, at 3 (Jun. 3,
 22 2019), [https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-](https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf)
[Jun19.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf).

23 ⁹⁸ *Id.* at 12.

24 ⁹⁹ Memorandum to Matthew Albence, Acting Deputy Dir., U.S. Immigr. and
 25 Customs Enf’t (Dec. 3, 2018),
[https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu](https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h)
 26 [7h](https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h).

27 ¹⁰⁰ *Id.*

28 ¹⁰¹ *Id.*

¹⁰² *Id.*

1 concluded that these inspections are fundamentally flawed in that “they are not
 2 independent, they do not include interviews with detained people, they provide
 3 advance notice to the facilities and look for the existence of policies rather than
 4 evidence that these policies are followed, and they often misrepresent conditions
 5 inside the facility, for example counting an indoor room with a skylight as outdoor
 6 recreation.”¹⁰³

7 188. Defendants’ failure to properly monitor Detention Facilities can have
 8 deadly consequences. For example, an April 2017 OIG inspection found that
 9 Stewart Detention Center suffered from major staffing issues, prompting one
 10 employee to describe the medical care situation as “a ticking time bomb.”¹⁰⁴
 11 That May, Nakamoto’s inspection found that Stewart complied with all 39
 12 applicable standards.¹⁰⁵ The same month, Jean Carlo Jimenez Joseph, who ICE
 13 detained at Stewart, died by suicide there because of a guard’s failure to
 14 perform a required cell check.¹⁰⁶ Then, in January 2018, 33-year-old Yulio
 15 Castro-Garrido died of pneumonia while detained at Stewart.¹⁰⁷ In July 2018,

16
 17 ¹⁰³ Detention Watch Network & National Immigrant Justice Center, *supra* note 13,
 18 at 6.

19 ¹⁰⁴ Office of Inspector General, U.S. Dep’t of Homeland Sec., *OIG Freedom of*
 20 *Information Act Request No. 2018-IGFO-00059 Final Response*, at 16 (April 25,
 21 2018), [https://www.wabe.org/wp-content/uploads/2018/05/2018-IGFO-](https://www.wabe.org/wp-content/uploads/2018/05/2018-IGFO-00059-Final-Response-watermark-4.pdf)
 22 [00059-Final-Response-watermark-4.pdf](https://www.wabe.org/wp-content/uploads/2018/05/2018-IGFO-00059-Final-Response-watermark-4.pdf); *see also Investigation finds ICE detention*
 23 *center cut corners and skirted federal detention rules*, Public Radio International
 24 (March 15, 2018), [https://www.pri.org/stories/2018-03-15/investigation-finds-ice-](https://www.pri.org/stories/2018-03-15/investigation-finds-ice-detention-center-cuts-corners-and-skirted-federal)
 25 [detention-center-cuts-corners-and-skirted-federal](https://www.pri.org/stories/2018-03-15/investigation-finds-ice-detention-center-cuts-corners-and-skirted-federal); Katherine Hawkins, *Outsourced*
 26 *Oversight*, Project on Government Oversight (March 12, 2019),
 27 <https://www.pogo.org/investigation/2019/03/outsourced-oversight/>.

28 ¹⁰⁵ Letter from Lead Compliance Inspector to Assistant Dir. for Detention Mgmt.,
supra note 93, at 2.

¹⁰⁶ Investigative Summary, GA Bureau of Investigation, at 92–93 (May 19, 2017)
 (on file with Plaintiffs’ Counsel).

¹⁰⁷ *ICE detainee passes away*, U.S. Immigration & Customs Enf’t, (Jan. 31, 2018),
<https://www.ice.gov/news/releases/ice-detainee-passes-away>.

1 Efrain De La Rosa, another person ICE was detaining at Stewart, died by
 2 suicide in circumstances almost identical to Mr. Jimenez Joseph.¹⁰⁸ In both
 3 cases, CoreCivic guards failed to perform a required check of the detained
 4 individual's cell and then falsified logs to cover for that failure.¹⁰⁹ The Nakamoto
 5 inspections failed to raise systematic failures of care at Stewart that could have
 6 prevented these deaths.

7 189. Similarly, at Adelanto, Nakamoto's 2017 and 2018 inspection reports
 8 found that the facility met all 40 applicable detentions standards.¹¹⁰ However, in
 9 between the two reports, OIG issued a report on Adelanto finding nooses in
 10 detained individuals' cells, improper and overly restrictive segregation, and
 11 untimely and inadequate medical care.¹¹¹ Nakamoto's 2018 report, instead of
 12 seriously addressing OIG's findings, dismissed them and admonished that "it would
 13 be advantageous for OIG to use inspectors with detention and corrections
 14 backgrounds for future inspections to avoid this type of embarrassment to their
 15
 16

17
 18 ¹⁰⁸ Investigation Report Form, CoreCivic General Counsel Office of
 Investigation, at 10 (Aug. 6, 2018) (on file with Plaintiffs' Counsel).

19 ¹⁰⁹ *Private prison giant under fire for pressuring Georgia to keep immigrant*
 20 *detainee's death report sealed*, Fast Company (Dec. 10, 2018),
 21 [https://www.fastcompany.com/90279208/private-prison-giant-under-fire-for-](https://www.fastcompany.com/90279208/private-prison-giant-under-fire-for-pressuring-georgia-to-keep-immigrant-detainees-death-report-sealed)
 22 [pressuring-georgia-to-keep-immigrant-detainees-death-report-sealed](https://www.fastcompany.com/90279208/private-prison-giant-under-fire-for-pressuring-georgia-to-keep-immigrant-detainees-death-report-sealed); *Investigation*
 23 *finds ICE detention center cut corners and skirted federal detention rules*, Public
 Radio International, (Mar. 15, 2018), [https://www.pri.org/stories/2018-03-](https://www.pri.org/stories/2018-03-15/investigation-finds-ice-detention-center-cuts-corners-and-skirted-federal)
 24 [15/investigation-finds-ice-detention-center-cuts-corners-and-skirted-federal](https://www.pri.org/stories/2018-03-15/investigation-finds-ice-detention-center-cuts-corners-and-skirted-federal).

25 ¹¹⁰ Letter from Lead Compliance Inspector to Assistant Dir. for Detention Mgmt.,
 26 *supra* note 93, at 2.; Letter from Lead Compliance Inspector, The Nakamoto Grp.,
 to Assistant Dir. for Detention Mgmt., at 2 (Oct. 11, 2018),
 27 [https://www.ice.gov/doclib/facilityInspections/adelantoWestCa_CL_10_11_2018.p](https://www.ice.gov/doclib/facilityInspections/adelantoWestCa_CL_10_11_2018.pdf)
 28 [df](https://www.ice.gov/doclib/facilityInspections/adelantoWestCa_CL_10_11_2018.pdf).

¹¹¹ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-18-86 supra* note
 61, at 2, 7, 8.

1 office and ICE.”¹¹² A March 2019 report by Disability Rights California
 2 subsequently confirmed and supported OIG’s findings that medical and mental
 3 health care and segregation policies were seriously deficient at Adelanto.¹¹³

4 190. These are only a few examples of Nakamoto’s system-wide
 5 incompetence. As stated by Scott Shuchart, Senior Advisor at CRCL for eight
 6 years, “Nakamoto has no credibility because of the volume of problems it has
 7 failed to uncover at multiple facilities over multiple years. . . . It is a checklist
 8 driven, superficial inspection process.”¹¹⁴ Similarly, in November 2018, 11 U.S.
 9 Senators wrote to Nakamoto Group expressing concern that its inspections “are
 10 potentially misrepresenting conditions in these facilities or underreporting
 11 violations.”¹¹⁵ However, despite all evidence that Nakamoto provides an
 12 ineffective oversight mechanism, Defendants continue to contract with the
 13 company for critical inspection services.

14 191. ODO inspections also fail to lead to systemic change. A 2016
 15 inspection of Aurora found deficiencies related to medical notifications, including
 16 that the Health Services Administrator (“HSA”) was not notified of detained
 17 individuals determined to be in need of mental health services during intake, and
 18 that 11 out of 26 medical records of chronic care patients lacked the required

21 ¹¹² Letter from Lead Compliance Inspector to Assistant Dir. for Detention Mgmt.,
 22 *supra* note 93, at 2.

23 ¹¹³ Disability Rights Cal., *supra* note 36, at 4.

24 ¹¹⁴ Katherine Hawkins, *Outsourced Oversight*, Project on Government Oversight
 (March 12, 2019), <https://www.pogo.org/investigation/2019/03/outsourced-oversight/>.

25 ¹¹⁵ Letter from Senator Elizabeth Warren *et al.* to Jennifer H. Nakamoto, President
 26 Nakamoto Grp., at 1 (Apr. 15, 2018),
 27 <https://www.warren.senate.gov/imo/media/doc/2018-11-16%20Letter%20to%20Nakamoto%20Group%20re%20ICE%20Detention%20Facility%20Inspections.pdf>.

1 medical or psychiatric alerts forms.¹¹⁶ The following year, this problem at Aurora
 2 still existed, as demonstrated by the DDR for Kamyar Samimi, who died of opioid
 3 withdrawal at the facility due to intake failures.¹¹⁷ Overall, in 2018, OIG concluded
 4 that Periodic Inspections do not “ensure consistent compliance with detention
 5 standards, nor do they promote comprehensive deficiency corrections.”¹¹⁸ As
 6 Inspector General John V. Kelly testified in March 2019, “neither the inspections
 7 nor the onsite monitoring ensure consistent compliance with detention standards,
 8 nor do they promote comprehensive deficiency corrections.”¹¹⁹

9 192. Even after inspections reveal major flaws, Defendants regularly fail to
 10 take corrective action. Though ERO Field Offices are tasked to respond to
 11 inspection flaws with corrective plans, they “do not always respond”; “some
 12 respond late, submit incomplete responses, or report that facility deficiencies will
 13 continue due to local policies or conditions.”¹²⁰ Repeat offenses are common, as
 14 “ICE does not appear to have a comprehensive process to verify whether facilities
 15 implemented all the corrective actions until the next Nakamoto or ODO
 16 inspection.”¹²¹

17
 18 ¹¹⁶ Office of Detention Oversight, U.S. Dep’t of Homeland Sec., *Enforcement and*
 19 *Removal Operations ERO Denver Field Office Denver Contract Detention Facility*
 20 *Aurora, CO*, at 9 (April 2016), [https://www.ice.gov/doclib/foia/odo-compliance-](https://www.ice.gov/doclib/foia/odo-compliance-inspections/denverContractDetentionFacilityAuroraCoApr_12_14_2016.pdf)
 21 [inspections/denverContractDetentionFacilityAuroraCoApr_12_14_2016.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/denverContractDetentionFacilityAuroraCoApr_12_14_2016.pdf).

22 ¹¹⁷ Office of Professional Responsibility, Detainee Death Review – Kamyar
 23 Samimi, at 2, (“Kamyar Samimi DDR”) [https://bento.cdn.pbs.org/hostedbento-](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf)
 24 [prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf).

25 ¹¹⁸ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-47*, *supra* note
 26 75, at 4.

27 ¹¹⁹ “DHS Office of the Inspector General” *Before the Subcomm. on Homeland Sec.,*
 28 *H. Comm. on Appropriations*, 116th Cong. (2019) (Statement Of John V. Kelly,
 Acting Inspector Gen., U.S. Dep’t of Homeland Sec.),
<https://www.oig.dhs.gov/sites/default/files/assets/TM/2019/oigtm-jvk-030619.pdf>

¹²⁰ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-47*, *supra* note
 75, at 11.

¹²¹ *Id.* at 12.

193. Likewise, Defendants often delay responding to or implementing CRCL recommendations. For example, CRCL's 2015 report to Congress stated that it sent ICE 49 recommendations at an Arizona facility in which three individuals died between October 2012 and April 2013.¹²² However, ICE took two years to respond, and even then, CRCL concluded that ICE did not respond appropriately to 30 of the 49 recommendations.¹²³ Similarly, CRCL provided ICE with recommendations concerning two facilities in 2012, and when ICE finally responded two and a half years later, "a large number of the responses were deemed to be either incomplete or unresponsive by CRCL."¹²⁴ CRCL has no enforcement power, so ICE is free to disagree with CRCL recommendations or refuse to implement them.¹²⁵

194. Defendants also shirk their obligations when they flout a Congressional directive to "complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report."¹²⁶ Though Defendants have been releasing those reports, beginning fiscal year 2018, ICE stopped releasing detailed Detainee Death Reviews to its FOIA library, and instead now publishes cursory "detainee death reports" that recite the basic facts surrounding a death without detailing why the death happened, what standards were violated, or how processes could be improved to prevent further deaths.¹²⁷

¹²² Office for Civil Rights & Civil Liberties, U.S. Dep't of Homeland Sec., *Fiscal Year 2015 Annual Report to Congress*, at 45 (Jun. 10, 2016), <https://www.hsdl.org/?view&did=801456>.

¹²³ *Id.*

¹²⁴ *Id.* at 40.

¹²⁵ See 6 U.S.C. § 345.

¹²⁶ H.R. Rep. No. 115-239 (2018).

¹²⁷ *Death Detainee Report*, Immigration & Customs Enf't (last updated May 20, 2019), <https://www.ice.gov/death-detainee-report>; *ICE Releases Sham Immigrant Death Reports As It Dodges Accountability And Flouts Congressional*

195. Defendants also attempt to evade their reporting responsibilities by interpreting Congress's mandate to complete reports on an "in-custody death" to not include deaths in which a detained person is transferred to a hospital to die.¹²⁸ By releasing detained individuals to their deathbeds, ICE evades reporting requirements and artificially suppresses the number of deaths for which it is considered responsible. For example, in May 2019, ICE diagnosed Johana Medina Leon with HIV and then immediately released her to a hospital, where she died four days later.¹²⁹ In February 2019, ICE "released" a comatose José Luis Ibarra Bucio to a hospital in which he died shortly thereafter.¹³⁰ ICE did not release even a cursory "detainee death report" for either individual.¹³¹

196. Those few times when ICE makes adverse findings regarding conditions in Detention Facilities, they typically do not result in any consequences. A January 2019 OIG report found numerous deficiencies in ICE's contract enforcement mechanisms.¹³²

197. First, the 2019 OIG report found that ICE does not consistently use contract-based quality assurance tools or impose consequences for contract noncompliance. Only 28 of 106 contracts reviewed for the OIG report contained Quality Assurance Surveillance Plan provisions that outlined requirements for compliance with performance standards, and potential actions ICE can take when a

Requirements, National Immigrant Justice Center (Dec. 19, 2018), <https://immigrantjustice.org/press-releases/ice-releases-sham-immigrant-death-reports-it-dodges-accountability-and-flouts>.

¹²⁸ *A Trans Asylum Seeker Dies After Pleading to ICE for Medical Care*, The Nation (June 4, 2019), <https://www.thenation.com/article/ice-otero-joa-transgender-death/>.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Death Detainee Report*, Immigration & Customs Enf't, *supra* note 127.

¹³² Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-19-18*, *supra* note 45, at 15.

1 contractor fails to meet those standards.¹³³ This results in confusion among
 2 contracting officers as to whether they can issue Discrepancy Reports documenting
 3 noncompliance, and whether they can seek financial penalties for
 4 noncompliance.¹³⁴

5 198. Second, OIG found that ICE very rarely imposes any consequences on
 6 its contractors for noncompliance.¹³⁵ From October 2015 to June 2018, various
 7 inspections and DSMs found 14,003 deficiencies at the 106 contract facilities
 8 reviewed by OIG, yet ICE imposed financial penalties only twice.¹³⁶ One of those
 9 two fines was for underpayment of wages to contractors.¹³⁷ Stewart and Adelanto,
 10 for example, have never been fined, despite multiple detainee deaths and internal
 11 OIG findings of noncompliance. Further, beginning in fiscal year 2009, Congress
 12 added language to the DHS appropriations bill requiring that ICE terminate
 13 contracts for any facility that failed two consecutive inspections.¹³⁸ Since then, no
 14 facility has failed two consecutive inspections.¹³⁹

15 199. Third, the 2019 OIG report noted that ICE uses waivers to excuse
 16 substandard conditions in Detention Facilities.¹⁴⁰ ICE frequently issues waivers of
 17 compliance to facilities with deficient conditions; however, ICE lacks a formal
 18 policy to govern the waiver process, and it has allowed ERO officials without clear
 19 authority to grant waivers.¹⁴¹ Contract facilities may be exempt from compliance
 20

21 ¹³³ *Id.* at 7.

22 ¹³⁴ *Id.*

23 ¹³⁵ *Id.* at 7–8.

24 ¹³⁶ *Id.*

25 ¹³⁷ *Id.* at 9.

26 ¹³⁸ Department of Homeland Security Appropriations Act of 2009, H.R. 6947,
 27 110th Cong. at 18 (2008).

28 ¹³⁹ Hawkins, *supra* note 114.

¹⁴⁰ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG-19-18*, *supra* note
 45, at 7.

¹⁴¹ *Id.*

1 indefinitely, as some waivers lack an end date and are not reviewed after
 2 approval.¹⁴² Further, ICE fails to communicate about waivers to its Office of
 3 Acquisitions Management.¹⁴³ Thus, Acquisitions Management cannot ensure that
 4 its Contract Officers' Representatives, or CORs, know about waiver decisions,
 5 which undermines their ability to monitor their assigned contracts.

6 200. Fourth, OIG found that ICE's policies result in inadequate
 7 enforcement of contracts because (a) ICE's policy of placing CORs in ERO Field
 8 Offices inhibits their ability to enforce contracts, and (b) ICE assigns too many
 9 contracts to individual CORs to allow CORs to adequately enforce those contracts.
 10 Specifically, CORs' current placement within ERO Field Offices has resulted in
 11 pressure for CORs to break protocol, the assignment of additional duties that create
 12 unachievable workloads, and the creation of environments impeding the oversight
 13 of contracts.¹⁴⁴ For example, OIG's 2019 report found that "[t]hree Field Offices
 14 restricted CORs from traveling to Detention Facilities" to evaluate compliance.¹⁴⁵
 15 Some CORs reported that they "were hesitant to identify instances of
 16 noncompliance or issue Discrepancy Reports . . . because they feared retaliation
 17 from Field Office management."¹⁴⁶

18 201. Fifth, a lack of direct access to important contract files hinders CORs'
 19 and DSMs' ability to monitor detention contracts.¹⁴⁷ CORs and DSMs both monitor
 20 detention contracts, but they lack consistent access to essential contract files
 21 including contracts and modifications.¹⁴⁸ CORs and DSMs do not have electronic
 22 access to contract files, and instead must maintain their own files—but they do not

23 ¹⁴² *Id.* at 10.

24 ¹⁴³ *Id.* at 12.

25 ¹⁴⁴ *Id.*

26 ¹⁴⁵ *Id.* at 13.

¹⁴⁶ *Id.*

27 ¹⁴⁷ *Id.* at 14–15.

28 ¹⁴⁸ *Id.* at 15.

1 always receive contracts and modifications and must try to obtain these documents
2 on their own, which can be time-consuming and inefficient.¹⁴⁹

3 202. Ultimately, as OIG's 2019 report concluded, "[n]ot only does ICE not
4 fully use contracting tools to hold detention facility contractors accountable for
5 failing to meet performance standards, [OIG's] previous work has determined that
6 ICE's inspections and onsite monitoring do not ensure consistent compliance with
7 detention standards or promote comprehensive deficiency corrections."¹⁵⁰ By
8 Defendants' own Inspector General's assessment, ICE has failed to meet
9 monitoring and oversight responsibilities, leaving the tens of thousands in
10 Defendants' custody to suffer.

11 **VI. As a Result of Defendants' Failure to Monitor and Oversee Medical and**
12 **Mental Health Care at Detention Facilities, Conditions in Those**
13 **Facilities Constitute Punishment and Expose Plaintiffs and Class**
14 **Members to Substantial Risk of Serious Harm.**

15 203. All Plaintiffs and the Class challenge Defendants' failure to ensure
16 Detention Facilities provide constitutionally adequate medical and mental health
17 care.

18 204. Specifically, the policies, practices, and procedures include but are not
19 limited to Defendants' failures to ensure the following: (1) adequate medical and
20 mental health care without lengthy and dangerous delays and outright denials of
21 care; (2) timely access to medically necessary specialty care or chronic care;
22 (3) provision of health care by trained or qualified personnel; (4) provision of
23 timely emergency health care; (5) adequate physical and mental health intake
24 screening; (6) adequate staffing of medical and mental health care positions;
25 (7) adequate mental health care; (8) adequate maintenance of medical records and
26 documentation; and (9) location of Detention Facilities in places where specialists
27 and community health care providers are readily available. In addition, the Class

28 ¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 17.

1 challenges Defendants' policies, practices, and procedures resulting in Defendants'
2 failure to ensure that conditions of confinement at Detention Facilities are not
3 similar to, or worse than, conditions found in prisons. Together, these practices will
4 be referred to as the "Challenged Practices."

5 205. Organizational Plaintiffs ICIJ and Al Otro Lado have had to divert
6 resources, and have had their missions frustrated, as a result of the Challenged
7 Practices.

8 206. All Individual Plaintiffs and members of the Class face a substantial
9 risk of serious harm resulting from Defendants' failure to adequately monitor and
10 oversee the Challenged Practices at Detention Facilities.

11 207. In addition, conditions of confinement that are expressly intended to
12 punish, that are not reasonably related to a legitimate governmental objective, or
13 that are excessive in relation to that objective constitute punishment in violation of
14 the Fifth Amendment due process clause.

15 208. As a result of Defendants' failure to adequately monitor and oversee
16 medical and mental health care practices in Detention Facilities, the Individual
17 Plaintiffs and members of the Class are subjected to the Challenged Practices,
18 which individually and collectively constitute punishment because they are
19 expressly intended to punish, and are not reasonably related to a legitimate
20 governmental objective and/or are excessive in relation to that objective.

21 **A. Defendants Systemically Fail to Ensure That Detained Individuals**
22 **Receive Timely Medical and Mental Health Care.**

23 209. Defendants have a policy and practice of systemically failing to
24 monitor and enforce requirements to provide timely access to medical and mental
25 health care. Across Defendants' network of Detention Facilities, detained
26 individuals experience lengthy and dangerous delays, and often outright denials, in
27 receiving medical and mental health care.

1 210. To seek care, detained individuals regularly must make repeated
2 requests to staff for medical attention—and then wait for days for a response. Once
3 they do receive a response, it is often days, weeks, or months before they can see
4 medical staff within Detention Facilities. They are commonly given over-the-
5 counter pain medication as the only intervention, even if the underlying medical
6 issue—from cancer to chest pain to depression—requires more serious and
7 immediate treatment.

8 211. Detained individuals experience harm and unnecessary pain and
9 suffering as a result of these delays and denials. Examples of the harm include
10 cancer that goes undiagnosed for years, severe pain that is left untreated, and
11 detained individuals who are placed at risk of amputation and other severe medical
12 consequences.

13 212. Moreover, Defendants are deliberately indifferent to the serious risk of
14 substantial harm and injury to detained individuals that results from this systemic
15 failure. Delays and denial of medical and mental health care have been cited
16 repeatedly in government reviews documenting detained individuals' deaths, in the
17 government's own reporting on Defendants' Detention Facility network, and in
18 non-governmental organization reporting. Despite these reports, Defendants have
19 taken no effective steps to eliminate or mitigate the delays and denial of care,
20 exposing Plaintiffs and members of the Class to significant risk of serious medical
21 harm.

22 213. These problems are systemic, as shown by the examples below of
23 delays or denials of medical treatment at Detention Facilities across the country.

24 214. Plaintiff Jimmy Sudney has experienced numerous delays in care for
25 his vision. In late 2015 and early 2016, while detained, he had surgeries to implant
26 and then remove silicone and a lens from his eye. His doctors then intended to
27 perform another surgery on December 9, 2016, to address glaucoma, a second-
28 degree cataract, and a detaching retina. On December 7, two days before he was to

1 have surgery, he was transferred to Eloy. Mr. Sudney told the doctor at Eloy that he
2 was supposed to have surgery, but did not have access to papers from his previous
3 doctors to show the Eloy doctor what he needed. Mr. Sudney was hospitalized three
4 times related to his high eye pressure while in detention at Eloy—once because the
5 Eloy doctor gave him medicine that gave him a seizure. The month after Mr.
6 Sudney filed a complaint regarding inadequate care for his eye, he was transferred
7 to Adelanto.

8 215. At Adelanto, Mr. Sudney continues to experience delays in care for his
9 eye. He saw a retina specialist in November 2018, who he did not see again until
10 May 2019—six months later. In July 2019, an outside doctor told Mr. Sudney that
11 he needs to have surgery as soon as possible, before he loses his vision completely.
12 Mr. Sudney's eye is getting worse—it is blurry when he reads, stays red, and he is
13 losing vision and starting to see flashing light and dripping on his eye. Mr. Sudney
14 has still not had the surgery he has needed since December 2016.

15 216. Plaintiff Melvin Murillo Hernandez endured four allergic, anaphylactic
16 shocks in six months before facility staff ordered a blood test to determine the
17 extent of Mr. Murillo Hernandez's allergies. On May 1, 2019, after Mr. Murillo
18 Hernandez had already once required hospitalization for anaphylactic shock, two
19 independent doctors informed ICE that Mr. Murillo Hernandez required access to
20 an EpiPen and an environment free of allergens. Staff at River did nothing, and Mr.
21 Murillo Hernandez subsequently required hospitalization on May 5 and May 6,
22 2019. Though medical staff did not identify any known allergens as the cause for
23 Mr. Murillo Hernandez's May 5 and May 6 anaphylaxis, medical staff again failed
24 to do any additional allergy testing or provide him access to an EpiPen. As a result,
25 Mr. Murillo Hernandez subsequently suffered at least another two hospitalizations.
26 Though medical staff referred him to an allergist on May 8, 2019, they never took
27 him to see any specialist until August 14, 2018. They waited until June 2019 to
28 perform the blood test necessary to determine Mr. Murillo Hernandez's allergies.

1 217. Likewise, on May 10, 2019, Mr. Murillo Hernandez told a nurse that
2 his heart was beating fast and his chest was hurting. Given Mr. Murillo
3 Hernandez's allergy history, medical staff should have closely monitored his
4 condition. Instead, the nurse told him the he was fine and did not order any
5 observation. The following morning, because of these failures, Mr. Murillo
6 Hernandez once again went into severe anaphylactic shock necessitating
7 hospitalization.

8 218. Plaintiff Alex Hernandez has experienced blurry vision and reported it
9 to medical staff at Etowah in or around April 2019. He was previously prescribed
10 glasses which were broken. He requested to see an optometrist. A nurse conducted
11 his vision test and told him he did not meet ICE's requirements to see an
12 optometrist, although the findings of the vision test are not noted in his records. He
13 was told he would receive reading glasses, but he has not received them and cannot
14 read his legal papers or other documents without borrowing another detainee's
15 glasses. Mr. Hernandez also has a torn rotator cuff, loss of vision, Barrett's
16 esophagus, and persistent pain in his hip, legs, and feet, and PTSD, for which he
17 needs ongoing medical care.

18 219. Plaintiff Salazar Artaga experienced a delay of more than a month in
19 receiving psychiatric care and appropriate psychotropic medication upon his arrival
20 to Florence Correctional Center, even after requesting the medication and
21 exhibiting symptoms of psychosis—banging his head on the walls, scratching
22 himself to the point that he was bleeding, and auditory and visual hallucinations—
23 because of a failure to identify his condition and suspicion of secondary gain. This
24 delay contributed to avoidable self-harm.

25 220. The experiences of Plaintiffs are not unique. Worse yet, Defendants
26 are on notice of, but have failed to remedy, these systemic delays and denials of
27 care.
28

221. For example, a report OIG produced on Adelanto concluded that “detainees do not have timely access to proper medical care,” and that “detainees are placed on wait lists for months and, sometimes, years to receive basic dental care.”¹⁵¹

222. According to a December 2017 OIG report, detained individuals at the Stewart Detention Center in Georgia and the Santa Ana City Jail in California, which previously contracted with ICE, reported “long waits for the provision of medical care, including instances of detainees with painful conditions, such as infected teeth and a knee injury, waiting days for medical intervention.”¹⁵²

223. Between 2011 and 2019, Detainee Death Reviews, or DDRs, documented lengthy and dangerous delays and denials of medical and mental health care at Detention Facilities across the country, including Adelanto, Albany County Correctional Facility (“Albany County”), Aurora, Brooks County Detention Center (“Brooks County”), Dodge County Detention Center (“Dodge County”), Elizabeth Detention Center (“Elizabeth”), Eloy, El Paso Processing Center (“El Paso”), Houston Contract Detention Center (“Houston”), Hudson County Correctional Facility (“Hudson County”), Immigration Centers of America—Farmville (“Farmville”), Joe Corley Detention Center (“Joe Corley”), Krome Service Processing Center (“Krome”), Rio Grande Detention Center (“Rio Grande”), Rolling Plains Correctional Facility (“Rolling Plains”), South Texas Detention Complex (“South Texas”), Stewart, Theo Lacy, and Utah County Jail (“Utah County”). These delays and denials contributed to a substantial number of the deaths reviewed.

¹⁵¹ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-86*, *supra* note 61, at 7.

¹⁵² Office of Inspector Gen., Office of Homeland Sec., *OIG-18-32: Concerns About ICE Detainee Treatment and Care at Detention Facilities*, at 7 (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

224. A 2018 Human Rights Watch (“HRW”) report further documents detainee deaths connected to dangerous and unreasonable delays in medical care at Adelanto, El Paso, Otero County Processing Center (“Otero County”), and San Diego County Detention Facility (“San Diego County”).¹⁵³

225. The following are just a few examples from the DDRs, HRW reports, and DRC reports that illustrate the harms caused by delays and lack of access to medical care in Detention Facilities.

226. On April 13, 2017, Sergio Alonso Lopez died from an upper gastrointestinal bleed while detained at Adelanto.¹⁵⁴ The DDR found that Mr. Lopez never received a response to his sick call requests within 48 hours unless he was already scheduled for a follow-up appointment.¹⁵⁵ He also waited more than four weeks to see a provider after laboratory tests showed abnormal results in February 2017.¹⁵⁶ As a result, “provider consideration of further testing and treatment was delayed.”¹⁵⁷

227. On April 6, 2015 Raul Ernesto Morales-Ramos died at Adelanto of organ failure with signs of widespread gastrointestinal cancer, which went undiagnosed despite two and a half years of Mr. Morales-Ramos’ complaints about gastrointestinal issues at Theo Lacy and Adelanto.¹⁵⁸

¹⁵³ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice Center & Detention Watch Network, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*, at 15, 19, 25, 46 (June 2018), https://www.hrw.org/sites/default/files/report_pdf/us0618_immigration_web2.pdf.

¹⁵⁴ Sergio Alonso Lopez DDR, *supra* note 71, at 16.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Office of Professional Responsibility, Office of Detention Oversight, *Detainee Death Review – Raul Ernesto Morales-Ramos*, at 1, 4–26 (“Morales-Ramos DDR”) <https://www.ice.gov/doclib/foia/reports/ddr-morales.pdf>.

228. On October 24, 2016, Olubunmi Toyin Joshua died of hypertensive cardiovascular disease while in ICE custody at Rolling Plains.¹⁵⁹ The DDR found that Ms. Joshua experienced multiple delays or denials of treatment. Despite high blood pressure readings on ten separate occasions, nursing staff failed to notify a provider, in contravention of nursing protocol.¹⁶⁰ After she was diagnosed with anemia and anxiety, conditions that increased her risk of heart attack, she waited two months before receiving iron supplements, and she never received anxiety medication.¹⁶¹ Additionally, it took two weeks and three requests before she was seen by a dentist on October 20, 2016, who found that she had gum abscesses and broken teeth.¹⁶² These deficiencies resulted in part from inadequate staffing. An independent medical expert found that “[i]t is difficult to imagine how the poor care provided to her during her detention did not materially contribute to her death.”¹⁶³

229. Third party reports are also replete with examples of delayed or denied medical care. For example, the 2019 DRC report found that Adelanto staff waited three months to provide the results of HIV and pregnancy tests to a woman who was raped multiple times during her journey to the United States.¹⁶⁴

230. Likewise, an asylum seeker from Cameroon detained at Imperial Detention Facility (“Imperial”) waited over four months in extreme pain to have

¹⁵⁹ Office of Professional Responsibility, *Detainee Death Review – Olubunmi Toyin Joshua* (2016) (“Olubunmi Toyin Joshua DDR”), <https://www.ice.gov/doclib/foia/reports/ddr-Joshua.pdf>.

¹⁶⁰ *Id.* at 17.

¹⁶¹ *Id.* at 18.

¹⁶² *Id.* at 19.

¹⁶³ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice Center & Detention Watch Network, *supra* note 153161, at 33.

¹⁶⁴ Disability Rights Cal., *supra* note 36, at 33.

1 several teeth pulled.¹⁶⁵ Dental staff told her they could only remove the problematic
 2 teeth, as opposed to providing other preventative care, because their contract
 3 limited them to extractions.¹⁶⁶ Furthermore, dental care staff at both Imperial and
 4 Mesa Verde stated that no routine checkups or cleanings are provided to detained
 5 individuals until they are detained for at least one year.¹⁶⁷

6 231. An asylum seeker from India saw the dentist at Imperial due to
 7 extreme pain in his mouth.¹⁶⁸ He was given painkillers but was not treated for the
 8 cause of pain.¹⁶⁹ He was told by dental staff that he needs additional treatment, but
 9 he has been waiting for treatment for two months. Every time he eats, his teeth hurt
 10 him.¹⁷⁰

11 232. An asylum seeker detained at Otay Mesa was repeatedly denied
 12 treatment for severe back pain.¹⁷¹ Facility guards forced her to walk without a
 13 mobility aid despite her continued complaints; she fell and hurt herself further, and
 14 she now must use a wheelchair.¹⁷²

15 233. Another detained individual at Otay Mesa complained of
 16 hemorrhaging for over two months and was repeatedly ignored until she fainted.¹⁷³
 17 She was taken to the hospital, where she had a blood transfusion in the hospital
 18 parking garage.¹⁷⁴

19
 20 _____
 21 ¹⁶⁵ Human Rights First, *Prisons and Punishment: Immigration Detention in*
 22 *California*, at 11 (Jan. 2018),
https://www.humanrightsfirst.org/sites/default/files/Prisons_and_Punishment.pdf.

23 ¹⁶⁶ *Id.*

24 ¹⁶⁷ *Id.*

25 ¹⁶⁸ *Id.* at 12.

26 ¹⁶⁹ *Id.*

27 ¹⁷⁰ *Id.*

28 ¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

234. Yet another detained individual at Otay Mesa experienced pain in her abdominal area for five months.¹⁷⁵ She was finally taken to the hospital, in shackles, for an ultrasound.¹⁷⁶ The hospital told her she had uterine fibroids and needed to see a gynecologist.¹⁷⁷ Upon return to the detention center, she was given ibuprofen and told to wait for an appointment.¹⁷⁸ As of March 2019, she had been waiting two months, despite complaining repeatedly to facility staff about vaginal bleeding.¹⁷⁹

235. Another detained individual at Adelanto reported, “I write a request to see doctor every day, but I haven’t been able to see one for six weeks[.] I’ve asked for medicine, but the only thing they have given me is ibuprofen.”¹⁸⁰ A detained individual at Imperial requested emergency help because of a severe tooth pain.¹⁸¹ He saw a nurse who gave him some pain medication and was initially told he would see a dentist later that day, but the patient did not actually see a dentist until four days later.¹⁸² He was later diagnosed with a periodontal abscess, which, according to an independent medical expert, could have spread to the rest of the body and developed into sepsis if left untreated.¹⁸³ The expert concluded that the detained individual should have been seen by a dentist the same day he reported severe pain.¹⁸⁴

¹⁷⁵ *Id.* at 11.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Ken Silverstein, *Death Valley: Profit and Despair Inside California’s Largest Immigration Detention Camp*, Project on Government Oversight (Dec. 22, 2018), <https://www.pogo.org/investigation/2018/12/death-valley-profit-and-despair-inside-californias-largest-immigration-detention-camp/>.

¹⁸¹ Human Rights Watch & CIVIC, *Systemic Indifference: Dangerous and Substandard Medical Care in U.S. Immigration Detention*, at 57 (May 2017), https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

1 236. The evidence set forth above and in the referenced reports show
2 Defendants' long-standing and systemic failure to ensure that medical and mental
3 health care is timely provided in Detention Facilities across the country. Defendants
4 are well aware of these delays and denials of health care in their network of
5 Detention Facilities, but they have taken no effective steps to ensure that care is
6 timely provided to detained individuals.

7 **B. Defendants Systemically Fail to Ensure Timely Access to Medically**
8 **Necessary Specialty and Chronic Care.**

9 237. Defendants have a policy and practice of systemically failing to
10 monitor and enforce requirements for timely access to medically necessary
11 specialty care, where the underlying condition requires the attention of a medical
12 specialist, or to chronic care, where the underlying condition requires ongoing
13 medical needs or diseases.

14 238. Defendants require ICE Health Service Corps approval of all
15 nonemergency requests for specialty care outside of the facility. Because the
16 Detention Facilities themselves do not employ medical specialists, this IHSC
17 approval process often results in lengthy delays and denials of specialty care. The
18 delays are not surprising because, according to a 2016 GAO report, Defendants
19 have no specific written clinical guidelines on which to base decisions on requests
20 for specialty care outside of a facility.¹⁸⁵

21 239. Compounding the delays, on information and belief, Defendants
22 require that facilities make an appointment with an off-site provider before
23 receiving approval from IHSC, which risks cancellation of the appointment if IHSC
24 does not approve the request or fails to do so in a timely manner. These
25 appointments are particularly difficult to reschedule in many Detention Facilities in
26 rural areas, far from any providers of specialty medical care.

27
28 ¹⁸⁵ U.S. Gov't Accountability Office, *GAO-16-23*, *supra* note 6970, at 18.

240. On information and belief, Defendants often do not provide specialty care for detained individuals that they believe may be deported soon. For example, Gabe Valdez, the ICE Assistant Field Office Director (“AFOD”) at Adelanto, told HRW that decisions on outside treatment can be affected by whether deportation is imminent. He stated, “[t]imelines for approval exist,”¹⁸⁶ explaining that a man who needs dentures but who will be deported in three days will not get dentures. He further stated decisions are made in consultation with ICE and with IHSC. Among other problems with this policy, Defendants cannot always predict when a person will be deported or released. Also, imminent departure dates do not obviate the need to provide medically necessary care while in ICE custody.

241. The California Department of Justice issued a report in March 2019 finding a failure to thoroughly assess patients with chronic diseases at West County Detention Facility in California. Referrals to specialty care were delayed up to seven weeks.¹⁸⁷ Likewise, a 2017 New York Lawyers for the Public Interest report documented Hudson County staff’s frequent denials of chronic and specialty care, including failures to provide specialty care to one detained individual suffering from sickle cell anemia and to another experiencing complications from a malfunctioning pacemaker.¹⁸⁸

242. Delays from these policies have in many cases resulted in unnecessary pain and suffering, permanent injuries, and death. For example, detained individuals with known heart conditions are denied treatment by specialists; a detained person with cataracts needing surgery was denied this treatment for a year,

¹⁸⁶ Human Rights Watch & CIVIC, *supra* note 181193, at 70.

¹⁸⁷ Becerra, *supra* note 19, at 115–16.

¹⁸⁸ New York Lawyers for the Public Interest, *Detained and Denied: Healthcare Access in Immigration Detention*, at 7–11 (February 2017), https://www.nylpi.org/wp-content/uploads/2017/02/HJ-Health-in-Immigration-Detention-Report_2017.pdf.

1 causing her vision to greatly deteriorate; and detained individuals with obvious
2 mental health issues are not provided specialty care.

3 243. Defendants are deliberately indifferent to the serious risk of substantial
4 harm and injury to Plaintiffs from this systemic failure. The deficiencies in the
5 provision of specialty and chronic medical care at Detention Facilities have been
6 repeatedly documented, including, without limitation, in numerous DDRs,
7 government reports, and nonprofit reports. Nevertheless, Defendants have taken no
8 effective steps to mitigate them, exposing Plaintiffs and members of the Class to
9 substantial risk of serious harm.

10 244. These failures to provide timely specialty and chronic medical care are
11 routine. Defendants have taken no action to effectively monitor or ensure that
12 Detention Facilities provide constitutionally mandated chronic and specialty care.

13 245. These problems are systemic, occurring across Defendants' network of
14 Detention Facilities, and are illustrated by the experiences of the Named Plaintiffs.

15 246. For example, Plaintiff Marco Montoya Amaya's medical records
16 indicate that the Yuba County Jail intended to refer him to a neurologist for
17 treatment of apparent end-stage neurocysticercosis on April 23, 2018. On
18 information and belief, Mr. Montoya Amaya has still never seen a neurologist,
19 despite worsening symptoms consistent with a brain parasite, and despite his likely
20 need for intensive treatment for this potentially life-threatening parasite condition.
21 Neurocysticercosis, when untreated, carries significant risks of brain damage,
22 meningitis, seizures, inflammation of the spinal cord that can lead to paralysis,
23 swelling of the brain that can lead to blindness, irreversible cognitive and
24 psychiatric symptoms, and other complications that may be fatal.¹⁸⁹

25 247. Plaintiff Jose Segovia Benitez has a heart condition that requires
26 specialty care. Due to Defendants' failure to ensure he receives specialty care, Mr.

27
28 ¹⁸⁹*Parasites—Cysticercosis*, Centers for Disease Control and Prevention, available
at https://www.cdc.gov/parasites/cysticercosis/health_professionals/index.html.

1 Segovia Benitez was hospitalized for several days for cardiac problems that may
2 have been avoided. Adelanto has entirely ignored several abnormal cardiology test
3 results while he has been in detention, despite his reports of intermittent chest pains
4 and several risk factors in his medical history. Specifically, in March 2018 and
5 again in January 2019, Mr. Segovia Benitez had an electrocardiogram (“EKG”) that
6 produced abnormal results; however, there was no apparent follow-up.

7 248. In April 2019, Mr. Segovia Benitez saw a doctor for chest pains, and
8 he was finally referred to a cardiologist and prescribed medication for his high
9 lipids. On information and belief, Mr. Segovia Benitez has not seen a cardiologist
10 through this referral, despite the urgency of this medical issue. Instead, Mr. Segovia
11 Benitez was seen by a cardiologist only during a cardiac emergency in July 2019;
12 however, since he was returned to Adelanto following that emergency, he has had
13 no follow-up cardiology care.

14 249. Plaintiff Salazar Artaga has repeatedly requested appropriate
15 medication and medical equipment for his cerebral palsy, a musculoskeletal and
16 developmental disorder. These included, for example, requests on March 21,
17 March 29, and April 7, and April 16, 2019 for appropriate medications to manage
18 back, knee, and foot pain resulting from his cerebral palsy. When the chronic
19 medication he typically takes for pain, Gabapentin, was prescribed after a delay, it
20 was prescribed at a much lower dose than his usual regimen and only “as needed”
21 instead of on a scheduled basis, which contributed to poor pain control for several
22 weeks.

23 250. Plaintiff Edilberto García Guerrero, who is detained at Aurora, has
24 been suffering from chronic migraines for several months. He has submitted written
25 requests for medical treatment to treat these migraines and has not had a diagnostic
26 evaluation or received any treatment specific to these migraines.

27 251. Mr. García Guerrero has also requested medical care due to
28 deterioration of his vision over several months. His visual acuity was noted by a

1 medical staff employee at Aurora in mid-December 2018, although visual acuity
2 tests merely note the general performance of a person's vision and do not alone
3 have significant medically diagnostic value. His vision was not evaluated by an
4 optometrist until months later, in June 2019. Mr. García Guerrero still has
5 diminished vision and has not been fitted for glasses.

6 252. In addition, Mr. García Guerrero has noted moving black spots in his
7 left eye, as well as a burning sensation since around the time he was attacked by
8 other detained individuals in spring 2019, diminishing his vision in his left eye. He
9 has still not seen a specialist for a diagnostic evaluation or for treatment.

10 253. Mr. García Guerrero has diminished hearing and persistent pain in his
11 left ear. He has been experiencing these symptoms since spring 2019 and
12 complained to medical staff of this ongoing issue. He filed a medical request in
13 May 2019 and previously complained about the pain and diminished hearing to
14 facility staff. Mr. García Guerrero still has not seen a medical professional to
15 diagnose or treat his ear issues.

16 254. Mr. García Guerrero had orthopedic surgery on his right ankle around
17 six ago after he was injured prior to detention. At that time, hardware was placed in
18 his bone. While in ankle shackles in ICE custody at the Aurora facility, Mr. García
19 Guerrero fell, injuring that same right ankle. His ankle has been swollen and very
20 painful in the several months since his fall. Mr. García Guerrero saw an orthopedic
21 specialist at the hospital in the spring of 2019. This specialist recommended
22 surgical intervention to fix his ankle. Mr. García Guerrero has still not had surgery,
23 although, on information and belief, he may have very recently been scheduled for
24 surgery. The facility provided him with a plastic ankle brace, and had long
25 informed him that the surgery would not be scheduled because it was "elective."

26 255. Plaintiff Alex Hernandez has a torn rotator cuff in his right shoulder.
27 He has had this injury for several years, causing Mr. Hernandez persistent and
28 severe pain on a daily basis. When he was transferred to ICE custody, he was

1 detained at Mesa Verde. Mr. Hernandez had a magnetic resonance imaging
2 (“MRI”) while detained at Mesa Verde, which led to diagnosis of his torn rotator
3 cuff. An orthopedic surgeon recommended surgery to repair his shoulder. Instead of
4 scheduling the surgery, ICE transferred him two weeks after the doctor
5 recommended surgery.

6 256. In or around October 2017, Mr. Hernandez was transferred to Otay
7 Mesa. His medical records, however, were not transferred, and he had to begin the
8 process of getting treatment for his torn rotator cuff from the beginning, despite
9 reporting the previous tests and recommendations to the medical staff at Otay Mesa.
10 He had an MRI in late November 2017 and a CT scan in January 2018; these tests
11 confirmed the same diagnosis he received at Mesa Verde—that Mr. Hernandez had
12 a torn rotator cuff. He received physical therapy and received cortisone shots that
13 temporarily helped, but the pain and limited range of motion persisted. Finally, in
14 or around December 2018, orthopedic surgeon he saw at Otay Mesa recommended
15 surgery.

16 257. Shortly after he was recommended for surgery a second time, Mr.
17 Hernandez was transferred yet again—this time to Etowah on or around December
18 12, 2018. Again, his medical records were not transferred with him and he had to
19 sign a consent form for Etowah to receive the records, even though he was still in
20 ICE custody. For the third time, he had to restart the diagnostic process to receive
21 treatment for his shoulder. Yet again, he had to have another MRI, despite the two
22 previous recommendations for surgery based on two previous MRIs. He had to wait
23 approximately three months before he was able to see an off-site specialist for his
24 shoulder. The orthopedic surgeon recommended surgery in late April 2019, but it
25 has yet to be scheduled, and Mr. Hernandez has not received any information as to
26 when he will be able to have the operation. As a result, he continues to experience
27 severe pain in his shoulder and has a limited range of motion. He fears that his
28 injury will worsen due to the lack of treatment.

1 258. In addition to his torn rotator cuff, Mr. Hernandez experiences
2 persistent pain in his right hip and both legs and feet that impedes his ability to
3 stand for more than about fifteen minutes and limits his mobility. Mr. Hernandez
4 saw an orthopedic surgeon in Otay Mesa to treat this medical issue, and he had to
5 restart this treatment as well when he was transferred to Etowah. Mr. Hernandez is
6 in near constant pain due to the inflammation in his hip and his feet. He was
7 recently told that he will not receive treatment for his hip and leg pain until after he
8 has had surgery for his shoulder, which has yet to be scheduled, to Mr. Hernandez's
9 knowledge.

10 259. Mr. Hernandez is also diagnosed with Barrett's Esophagus, which
11 places him at higher risk of esophageal cancer. To monitor this condition, he was
12 receiving regular endoscopies not more than every three years. His last endoscopy
13 was a year before he was in ICE custody. He has reported this condition and the
14 need for his endoscopy to monitor his condition. It has been nearly four years since
15 he had his last endoscopy.

16 260. Plaintiff Aristoteles Sanchez Martinez has diabetes. His blood sugar
17 levels have consistently been dangerously high since entering ICE custody. Prior to
18 being in ICE detention, Mr. Sanchez Martinez's diabetes was being managed, but it
19 has progressively worsened since being in ICE custody. There have been no
20 meaningful efforts made to control his blood sugar, such as changing his diet,
21 significantly increasing his insulin dosage, or changing the type of insulin he
22 receives.

23 261. Mr. Sanchez Martinez has experienced delays and denials in receiving
24 his daily insulin shots due to the lack of custody staff to escort him to medical.
25 Twice a day, Mr. Sanchez Martinez must have his blood sugar checked and receive
26 insulin based on his blood sugar. However, due to inadequate staffing, he rarely
27 receives his insulin shots on time, and sometimes not at all, putting him at risk of
28 life-threatening situations daily.

1 262. Since November 2018, Mr. Sanchez Martinez has missed at least 11
2 insulin shots. On numerous other occasions, he was delayed in receiving his insulin,
3 and thus at risk of missing a meal. The denials he experienced in receiving his
4 insulin shots have contributed to his uncontrolled diabetes, which in turn has
5 exacerbated the severity of his other medical conditions.

6 263. Additionally, staff are not well-trained as to Mr. Sanchez Martinez's
7 medication administration; due to the high staff turnover, inexperienced and
8 untrained staff often do not know the proper protocols for his medication. To
9 reduce delays in medical care, Mr. Sanchez Martinez reminds staff daily to wake
10 him up for his morning insulin. Further, due to delays between being given his
11 insulin and being escorted to the cafeteria, Mr. Sanchez Martinez often does not
12 receive his meals immediately after receiving insulin. Delays in receiving his meals
13 after insulin shots leave Mr. Sanchez Martinez vulnerable to hypoglycemic events.

14 264. Further, Mr. Sanchez Martinez's history of high blood sugar levels
15 indicates that he requires a doctor monitoring his kidneys to prevent kidney
16 damage. His medical records contain no documentation of such monitoring.
17 Similarly, Mr. Sanchez Martinez has not had his annually required eye examination
18 necessary to monitor for diabetic retinopathy.

19 265. On December 26, 2018, Plaintiff Ruben Darío Mencías Soto fell in the
20 shower at Adelanto, and he has been in immense pain ever since. The day after his
21 fall, Mr. Mencías Soto was taken to the medical unit at Adelanto where staff did X-
22 rays on his back; about three weeks later, Mr. Mencías Soto received an MRI scan
23 on his back. In early February, Adelanto medical staff referred Mr. Mencías Soto
24 for a consultation with a neurologist to discuss a possible back surgery, pending
25 ICE approval. About two weeks later, an Adelanto doctor explained to Mr. Mencías
26 Soto that the discs in his back were dislocated and herniated, that he should stop
27 doing strenuous physical activities and exercising, and that he would know in two
28 weeks when a surgery would be scheduled.

1 266. Since his fall in December 2108, Mr. Mencías Soto has been in
2 significant pain. He cannot walk without assistance, and the pain in his back and leg
3 is constant and severe. Though he has complained multiple times of 10 out of 10
4 pain, medical staff have neglected to increase his pain relief medication or provide
5 him meaningful physical therapy. He did not receive pain medication besides
6 ibuprofen until about three months after his fall.

7 267. On May 10, 2019, more than five months after his fall, Adelanto staff
8 brought Mr. Mencías Soto to see a neurologist for the first time. After the
9 neurologist explained the relevant options, Mr. Mencías Soto opted for attempting
10 physical therapy and medication before surgery. However, since that meeting, Mr.
11 Mencías Soto has not received any physical therapy or new medication. In early
12 July 2019, Mr. Mencías Soto asked a nurse in Adelanto about the status of his
13 therapy or surgery, but the nurse responded that the medical staff was waiting for
14 ICE to approve his treatment. His extreme pain persists.

15 268. Defendants have knowingly selected to detain thousands of individuals
16 in these remote, rural locations, notwithstanding the paucity of medical providers
17 and the acute nature of many detained individuals' medical needs. Defendants'
18 reliance on rural Detention Facilities, through which many detained individuals are
19 transferred and where some spend months or years, poses a substantial risk of
20 serious harm to Plaintiffs and the Class.

21 269. This danger is known to Defendants. In 2016, the Health Services
22 Administrator at Stewart told an OIG inspector that because of the facility's rural
23 location, there was a lack of community health care providers, mental health
24 treatment centers, ambulance service, and emergency care in the area around the
25 Detention Facility.¹⁹⁰ Stewart is two hours and fifteen minutes from Atlanta, and 45
26 minutes from Columbus, Georgia. Detention Facilities like LaSalle, Rolling Plains,

27
28 ¹⁹⁰ Office of Inspector Gen., Office of Homeland Sec., *FOIA Response No. 2018-IGFO-00059*, *supra* note 104, at 35.

1 Pine Prairie ICE Processing Center, and Irwin are located even farther from major
2 population centers and therefore, on information and belief, suffer from similar
3 medical care scarcities.

4 270. As a result, one individual detained at Stewart in 2016 told an OIG
5 inspector that he waited for ten weeks just to have a chest X-ray taken.¹⁹¹

6 271. Another detained individual complained about serious medical
7 problems—a hernia and the inability to urinate due to some blockage—but reported
8 that he was not seen by an outside doctor for approximately nine days.¹⁹²

9 272. Defendants have long known of, but nevertheless are deliberately
10 indifferent to, the serious risk of substantial harm and injury to plaintiffs and
11 members of the class resulting from confinement in detention centers in locations
12 without access to adequate medical and mental health care.

13 273. Between 2011 and 2019, DDRs documented Defendants' failures to
14 provide timely access to specialty or chronic care at Detention Facilities across the
15 country, including Adelanto, Albany, Aurora, Elizabeth, Eloy, Essex County,
16 Houston, Krome, LaSalle, Otero, Port Isabel Detention Center ("Port Isabel"), Rio
17 Grande, South Texas, Theo Lacy, and Utah. A significant number of the death
18 reviews implicated these failures.

19 274. Sergio Alonso Lopez died in April 2017 due in part to heroin and
20 alcohol withdrawal, after medical staff at Adelanto failed to monitor and assess his
21 withdrawal.¹⁹³ Mr. Lopez had been taking methadone for more than 17 years for
22 heroin withdrawal.¹⁹⁴ Although a doctor diagnosed Mr. Lopez with opioid
23 dependence with withdrawal a day after Mr. Lopez's arrival at the facility on
24

25 ¹⁹¹ *Id.* at 24.

26 ¹⁹² *Id.* at 75.

27 ¹⁹³ Sergio Alonso Lopez DDR, *supra* note 71 at 16.

28 ¹⁹⁴ *Id.* at 4.

1 February 9, 2017, the doctor did not order recommended assessments and did not
2 order nurses to monitor Mr. Lopez during his withdrawal.¹⁹⁵

3 275. The DDR for Mr. Lopez found numerous ways in which Adelanto
4 failed to provide timely, medically necessary specialty care for withdrawal,
5 including that the facility failed to act in accordance with standards governing
6 detoxification of chemically dependent detained individuals because medical staff
7 did not monitor and assess Mr. Lopez while he underwent withdrawal.¹⁹⁶

8 276. On June 13, 2016, Luis Alonso Fino Martinez died while in ICE
9 custody at Essex County.¹⁹⁷ The cause of death was listed as hypertensive and
10 atherosclerotic cardiovascular disease with congestive heart failure.¹⁹⁸ The DDR
11 found that though Mr. Fino Martinez had a history of high cholesterol and insulin-
12 dependent diabetes and clinical guidelines call for the completion of an EKG for
13 patients with diabetes, facility staff never order an EKG for Mr. Fino Martinez,
14 despite multiple medical encounters during which one was mandated by clinical
15 guidelines.¹⁹⁹

16 277. On March 17, 2016, Thongchay Saengsiri died while detained at the
17 LaSalle Detention Center in Jena, Louisiana.²⁰⁰ His cause of death was listed as
18 hypertensive atherosclerotic cardiovascular disease with emphysema and obesity.²⁰¹
19 Mr. Saengsiri suffered from worsening symptoms of congestive heart failure for
20 most of the 15 months he was at the facility, including fainting, swelling, anemia, a

21 ¹⁹⁵ *Id.* at 11–12.

22 ¹⁹⁶ *Id.* at 16.

23 ¹⁹⁷ Office of Professional Responsibility, *Detainee Death Review – Moises Tino-*
24 *Lopez*, at 1 (“Moises Tino-Lopez DDR”) <https://www.ice.gov/doclib/foia/reports/ddr-Tino.pdf>.

25 ¹⁹⁸ *Id.*

26 ¹⁹⁹ *Id.* at 5, 6, 8, 21.

27 ²⁰⁰ Office of Professional Responsibility, *Detainee Death Review – Thongchay*
Saengsiri, at 1, <https://www.ice.gov/doclib/foia/reports/ddr-Saengsiri.pdf>.

28 ²⁰¹ *Id.*

1 nonproductive cough, and shortness of breath.²⁰² These symptoms were largely
 2 ignored by medical staff.²⁰³ The DDR found that in May 2015, an EKG report
 3 indicated no assessment could be made because an artificial pacemaker prevented
 4 measurement of the detainee's heart rate and rhythm, but Mr. Saengsiri did not have
 5 a pacemaker.²⁰⁴ In January 2016, his abnormal EKG results were never
 6 interpreted.²⁰⁵ In February 2016, he did not receive a referral to a doctor or a re-
 7 evaluation from a provider after complaining of a cough, shortness of breath, and
 8 wheezing.²⁰⁶ In addition, the records indicated that on several occasions, Mr.
 9 Saengsiri was supposed to be seen for follow-up visits or evaluations, but those
 10 visits and evaluations did not occur.²⁰⁷ Two expert physicians reviewed the case on
 11 behalf of HRW, concluding that his death likely could have been prevented with
 12 appropriate care to manage his symptoms.²⁰⁸ The experts found that Mr. Saengsiri
 13 demonstrated very clear symptoms of the new onset of congestive heart failure
 14 from the early days of his detention, and that he needed aggressive cardiac
 15 management, most likely including hospital admission.²⁰⁹

16 278. Raul Ernesto Morales Ramos died from gastrointestinal cancer in April
 17 2015 while detained at Adelanto.²¹⁰ In the two years in detention prior to his death,
 18 he suffered from symptoms of undiagnosed cancer, including weight loss, body
 19 aches, diarrhea, and rectal bleeding, but he was not seen by a specialist until a
 20 month before his death, when it was too late. In March 2015, a nurse at Adelanto

21 _____
 22 ²⁰² *Id.* at 18–21.

23 ²⁰³ *Id.*

24 ²⁰⁴ *Id.* at 19.

25 ²⁰⁵ *Id.*

26 ²⁰⁶ *Id.*

27 ²⁰⁷ *Id.*

28 ²⁰⁸ Human Rights Watch, Am. Civil Liberties Union National Immigrant Justice Center & Detention Watch Network, *supra* note 153161, at 19.

²⁰⁹ *Id.*

²¹⁰ Raul Ernesto Morales-Ramos DDR, *supra* note 158, at 23.

1 noted that Mr. Morales Ramos had a distended abdomen but she “did not detect a
2 mass or protrusion.”²¹¹ Four days later, he was seen by a doctor who stated that Mr.
3 Morales Ramos had “the largest [abdominal mass] she ha[d] ever seen in her
4 practice,” which was “notably visible through the abdominal wall.”²¹²

5 279. Based on the doctor’s findings and referrals, Mr. Morales Ramos was
6 scheduled for a colonoscopy, which did not occur until about one month later.²¹³
7 During the colonoscopy, he began to experience abdominal bleeding after the
8 doctor attempted to remove “a huge rectal mass.”²¹⁴ He was transferred to the
9 hospital and died three days later.²¹⁵

10 280. The evidence set forth above demonstrates a systemic failure to ensure
11 that necessary chronic and specialty care is timely provided at Detention Facilities.
12 These delays and denials persist because of Defendants’ failure to adequately
13 monitor, oversee, and administer their facilities.

14 **C. Defendants Systemically Fail to Ensure That Care is Provided by**
15 **Trained or Qualified Personnel.**

16 281. Defendants have a systemic policy and practice of failing to monitor
17 and ensure that Detention Facilities provide health care from trained and qualified
18 personnel.

19 282. Detained individuals throughout Defendants’ detention network
20 receive inadequate healthcare from providers untrained on basic protocols, as well
21 as from licensed practical nurses and other providers attempting to provide care
22 well outside their scope of licensure, often without the consultation of doctors. This
23 includes staff failing to properly respond to serious health events—like opioid
24 withdrawal, chest pain, and seizures—because of a lack of training and inadequate

25 ²¹¹ *Id.*

26 ²¹² *Id.* at 24–25.

27 ²¹³ *Id.* at 29.

28 ²¹⁴ *Id.* at 30.

²¹⁵ *Id.* at 32.

1 protocols, staff ordering interventions that are contraindicated by individuals’
2 symptoms, and staff not involving physicians in decision-making.

3 283. For example, an internal ICE memo identified five cases between
4 November 2017 and March 2018 in which ICE failed to follow withdrawal
5 guidelines for detained individuals who have alcohol or opioid withdrawal.²¹⁶ Four
6 out of five cases lacked physician oversight.²¹⁷

7 284. According to a 2011 OIG report entitled “Management of Mental
8 Health Cases in Immigration Detention,” OIG visited three facilities in which
9 nurses who were not trained in psychiatric mental health care were assigned to
10 administer psychiatric medication, communicate with mentally ill patients about
11 their medication and participation in recreation activities, and help to manage
12 acutely psychotic or aggressive detained individuals.²¹⁸

13 285. Despite numerous government reports, non-governmental organization
14 reports, DDRs, and other documentation of this serious problem, Defendants have
15 taken no effective steps to ensure that health care personnel at Detention Facilities
16 are properly trained or qualified, exposing detained individuals to significant risk of
17 serious harm.

18 286. Detention Facilities’ reliance on untrained and unqualified personnel is
19 widespread, occurring at Detention Facilities across the country, and resulting from
20
21

22 ²¹⁶ Email to Matthew Albence, Acting Deputy Dir., U.S. Immigr. and Customs
23 Enf’t, at 2 (Dec. 3, 2018),
24 <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h>.

25 ²¹⁷ *Id.*

26 ²¹⁸ Office of Inspector Gen., Office of Homeland Sec., *OIG-11-61: Management of*
27 *Mental Health Cases in Immigration Detention* (2011),
28 <https://www.hsdl.org/?view&did=6985>.

1 systemic deficiencies in Defendants' oversight and monitoring practices and
2 policies.

3 287. For example, HRW's 2017 report details substandard provision of
4 medical care by Defendant's healthcare providers. The report found a pervasive
5 practice of vocational and practical nurses practicing outside of their scopes of
6 practice, without licensed practitioner and doctor supervision, at Imperial, Yuba
7 County, Eloy, and Laredo Detention Center ("Laredo"), causing grave injury to
8 detained individuals there.²¹⁹

9 288. Plaintiffs have suffered significant harm resulting from treatment by
10 untrained or unqualified personnel.

11 289. On May 10, 2019, Plaintiff Melvin Murillo Hernandez told a nurse that
12 his heart was beating fast and his chest was hurting. Given Mr. Murillo
13 Hernandez's allergy history, which included multiple hospitalizations while in ICE
14 custody, medical staff should have closely monitored his condition. Instead, the
15 nurse, who is not qualified to diagnose or treat individuals, told him the he was fine
16 and did not order any observation or relay the complaint to a doctor or nurse
17 practitioner. The following morning, Mr. Murillo Hernandez was found
18 unconscious in his cell and Mr. Murillo Hernandez once again went into severe
19 anaphylactic shock necessitating hospitalization.

20 290. Upon Plaintiff Aristoteles Sanchez Martinez's arrival to Stewart, a
21 nurse forced him to choose between his back brace and his hernia belt. The nurse
22 was not qualified to discontinue his use of the back brace or hernia belt. Upon
23 information and belief, she did not consult with a provider before discontinuing Mr.
24 Sanchez Martinez's use of the back brace. Both devices served different medical
25 purposes and Mr. Sanchez Martinez has been without his back brace since his
26 intake risking further injury to his back.

27
28 ²¹⁹ Human Rights Watch & CIVIC, *supra* note 181, at 25–26, 61–64, 67–68.

1 291. On March 27, 2019, Plaintiff Salazar Artaga requested Risperidone (he
2 spelled it “Respodon”) because he had taken the medication previously and needed
3 it for a long-standing condition. L. Boone, LPN, noted that no referral or
4 appointment was needed, as Mr. Salazar Artaga had been seen the day before. But a
5 licensed practical nurse is not qualified to evaluate the need for a prescription for
6 anti-psychotic medication. Further, a denial of such medication to a patient with a
7 history of psychosis can put the individual at risk of self-harm. As a result of the
8 failure to escalate his request, Plaintiff Salazar Artaga developed hallucinations and
9 suicidal ideation requiring him to be put on suicide watch repeatedly. His requests
10 for refills of pain medication and a shower chair were similarly ignored by LPNs
11 without documented discussions with qualified medical providers, even though
12 such decisions are outside the scope of practice for an LPN.

13 292. After Adelanto staff caused Plaintiff Martin Muñoz to overdose by
14 giving him triple the amount of his prescribed insulin, Mr. Muñoz was never
15 evaluated by a doctor—despite the fact that such overdoses can lead to comas and
16 be fatal. Although nurses checked on Mr. Muñoz a few times, guards took over the
17 primary responsibility for checking on Mr. Muñoz’s wellbeing in the aftermath of
18 this overdose.

19 293. Defendants are aware of these deficiencies but have failed to take any
20 effective measures to prevent them from recurring in the future.

21 294. For example, between 2011 and 2019, DDRs documented that
22 unqualified personnel provided health care at Detention Facilities across the
23 country, including Aurora, Brooks, Dodge County, Eloy, El Paso, Farmville, Port
24 Isabel, Rio Grande, San Bernardino County Detention Center (“San Bernardino
25 County”), and Utah County. In a significant number of the reviewed deaths,
26 unqualified personnel were involved in providing health care.

27 295. According to the DDRs, in some facilities, only half of the medical
28 staff were trained in basic skills such as CPR and first aid. This lack of training for

1 medical staff severely increases the risk of fatalities for detained individuals in
 2 emergency situations. Moreover, the nurses at many facilities lack proper medical
 3 training for the types of medical conditions they encounter, especially for
 4 emergency situations.

5 296. The DDRs also highlighted many instances of important medical
 6 decisions being made by non-medical staff. On December 2, 2017, Kamyar Samimi
 7 died at Aurora after inadequate care for opioid withdrawal.²²⁰ He was never seen by
 8 a doctor.²²¹ His DDR found that, despite Mr. Samimi's "frequent and progressive
 9 complaints related to symptoms of withdrawal, nurses administered less than 50%
 10 of physician-ordered withdrawal medications" ²²² Nurses also failed to
 11 consistently document signs of withdrawal or medication administration; to
 12 correctly document orders; to perform nursing assessments, obtain vital signs, or
 13 monitor Mr. Samimi's weight loss; and to maintain Mr. Samimi's safety through
 14 fall prevention and injury assessments during fainting episodes. Additionally,
 15 nursing notes "were brief and inadequate"²²³ and were not in standard format. On at
 16 least two occasions, a nurse failed to call the physician "despite her observation of
 17 [Mr. Samimi's] serious clinical symptoms."²²⁴

18 297. Additionally, nurses were never trained in opiate withdrawal, and so
 19 never completed ordered withdrawal monitoring.²²⁵

20
 21 ²²⁰ Office of Professional Responsibility, *Detainee Death Review- Kamyar Samimi*,
 22 at 3 (2017) ("Samimi DDR"), [https://bento.cdn.pbs.org/hostedbento-](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf)
[prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf).

23 ²²¹ *Id.*

24 ²²² Memorandum from Jennifer M. Fenton, Assistant Dir., U.S. Immigr. and
 25 Customs Enf't, to Matthew Albence, Exec. Assoc. Dir., Enf't and Removal
 26 Operations (May 22, 2018) at 3, available at [https://bento.cdn.pbs.org/hostedbento-](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf)
[prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf).

27 ²²³ Samimi DDR, *supra* note 220, at 32.

28 ²²⁴ *Id.* at 29.

²²⁵ *Id.* at 31.

1 298. Overall, nurses “demonstrated a lack of understanding of opioid
2 withdrawal symptoms” and “failed to properly monitor [Mr. Samimi] as he
3 withdrew from opioids and to recognize his related life-threatening symptoms.”²²⁶

4 299. Olubunmi Toyin Joshua died in October 2016 of hypertensive
5 cardiovascular disease while detained at Rolling Plains.²²⁷ The DDR found that
6 although the facility had a hypertension protocol, the nurses did not follow that
7 protocol, presumably because they had not received sufficient training.²²⁸ One nurse
8 stated that he set the blood pressure threshold for provider notification
9 independently, rather than follow protocol.²²⁹ Additionally, a nurse who conducted
10 Ms. Joshua’s physical assessment lacked training to do so.²³⁰

11 300. On September 27, 2016, Moises Tino Lopez died while in ICE custody
12 at Hall County.²³¹ The DDR found that the facility did not have a written,
13 formalized seizure protocol in place.²³² Additionally, “staff reported inconsistent
14 understanding of procedures” for placing Mr. Tino on 15-minute status checks after
15 his first seizure on September 6.²³³ Independent experts for HRW concluded that
16 serious medical failures, including the fact that Mr. Tino’s repeated seizures failed
17 to prompt a high level of concern and attention from medical staff, likely
18 contributed to his death.²³⁴

19
20 ²²⁶ *Id.* at 31.

21 ²²⁷ Olubunmi Toyin Joshua DDR, *supra* note 159, at 1.

22 ²²⁸ *Id.* at 17.

23 ²²⁹ *Id.* at 17.

24 ²³⁰ *Id.* at 19.

25 ²³¹ Office of Professional Responsibility, *Detainee Death Review – Moises Tino-Lopez* (“Moises Tino-Lopez”), <https://d1zbh0am38bx6v.cloudfront.net/wp-content/uploads/2018/07/17044550/ddr-Tino.pdf>.

26 ²³² *Id.* at 16.

27 ²³³ *Id.* at 16.

28 ²³⁴ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice Center & Detention Watch Network, *supra* note 153161, at 30–3.

1 301. Raul Ernesto Morales Ramos died on April 6, 2015 at Adelanto, after a
 2 doctor attempted to remove a large rectal mass that developed when Adelanto
 3 medical staff neglected to treat Mr. Morales' gastrointestinal cancer.²³⁵ The DDR
 4 found that many facility medical staff cited "a high turnover rate among nurses [as]
 5 a great concern," and that "approximately 50 percent of ADF's medical staff hires
 6 are new graduates" with a "definite difference between their skills and those of
 7 more experienced nurses."²³⁶ In addition, the DDR found the facility deficient in
 8 that it failed to conduct any formal skills training or require nurses to demonstrate
 9 competency prior to conducting clinical assessments, and also that it failed to
 10 provide comprehensive training and routine competency evaluations.²³⁷

11 302. On May 1, 2016, Igor Zyazin died of a heart attack while confined at
 12 Otay Mesa.²³⁸ He was previously detained at the Emerald Correctional
 13 Management San Luis Regional Detention Center ("San Luis") in San Luis,
 14 Arizona. On April 29, 2016, a nurse managed Mr. Zyazin's acute chest pain by
 15 administering nitroglycerin without a doctor's order.²³⁹ Independent medical
 16 experts for HRW found that this was dangerous and "a major breach of her scope of
 17 license and one which requires reporting to the state board."²⁴⁰

18 303. Another detained individual fell in the shower in February 2015 while
 19 detained in ICE custody at the Yuba County Jail.²⁴¹ He tore his ACL and may have
 20 sustained a fracture.²⁴² He requested medical care for his knee several times but

21
 22 ²³⁵ Morales-Ramos DDR, *supra* note 158, at 1.

23 ²³⁶ *Id.* at 37.

24 ²³⁷ *Id.*

25 ²³⁸ Office of Professional Responsibility, *Detainee Death Review – Igor Zyazin*,
 26 <https://www.ice.gov/doclib/foia/reports/ddr-Zyazin.pdf>.

27 ²³⁹ *Id.* at 7–8.

28 ²⁴⁰ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
 Center & Detention Watch Network, *supra* note 155, at 27.

²⁴¹ Human Rights Watch & CIVIC, *supra* note 181, at 63 (internal citation omitted).

²⁴² *Id.* at 63.

1 only saw a licensed vocational nurse (“LVN”).²⁴³ His medical needs were outside
 2 the scope of the LVN’s practice, and the nurse did not refer him to a doctor until his
 3 fifth visit.²⁴⁴ He eventually had surgery, and collapsed two days later with shortness
 4 of breath.²⁴⁵ The LVN who responded to his collapse failed to measure his
 5 respiration or blood pressure, and did not contact the physician.²⁴⁶ He was at risk of
 6 blood clot and pulmonary embolism, and failure to involve a physician presented a
 7 major threat to Mr. Morales’s life.²⁴⁷ One independent medical expert stated, “It is
 8 clear that the health care is delivered mostly by LVNs practicing independently.
 9 They call the MD when they think it’s necessary, but unfortunately, they do not
 10 have sufficient training and licensure to know when that is.”²⁴⁸

11 304. Regarding a woman who was detained at Eloy, independent medical
 12 experts for HRW found multiple examples of her receiving inadequate care from
 13 nurses when her symptoms required care from a nurse practitioner, a general
 14 practice doctor, or a gynecologist.²⁴⁹ According to one expert, “There was a repeat
 15 pattern of nurses making decisions they’re not qualified to make and little to no
 16 oversight by nurse-practitioners or physicians, which is dangerous.”²⁵⁰

17 305. Marjorie Annmarie Bell complained of chest pain multiple times at
 18 CoreCivic’s San Diego facility in California before dying of a heart attack in
 19 February 2014.²⁵¹ The DDR found that a nurse failed to follow the facility’s chest
 20 pain guidelines on the day of her death by not calling 911 after Ms. Bell requested

21 ²⁴³ *Id.* at 63.

22 ²⁴⁴ *Id.* at 63.

23 ²⁴⁵ *Id.* at 64.

24 ²⁴⁶ *Id.* at 64.

24 ²⁴⁷ *Id.* at 64.

25 ²⁴⁸ *Id.* at 63.

26 ²⁴⁹ *Id.* at 67–68.

26 ²⁵⁰ *Id.* at 68.

27 ²⁵¹ Office of Professional Responsibility, *Detainee Death Review – Marjorie*
 28 *Annmarie Bell*, <https://www.ice.gov/doclib/foia/reports/ddr-bell.pdf>.

1 morphine for pain that would not go away.²⁵² Several other nurses indicated that
 2 they were unsure whether the facility had chest pain guidelines, or were unsure of
 3 the guidelines' contents.²⁵³ The DDR stated that it is critical that nurses receive
 4 training and adhere to established guidelines.²⁵⁴ According to one expert who
 5 reviewed this case on behalf of HRW, "on six separate occasions she informed
 6 nurses that she was having chest pain, and on none of those occasions did a nurse
 7 contact a physician or call an ambulance."²⁵⁵

8 306. The examples set forth above reflect a systemic failure to ensure that
 9 qualified and trained personnel provide health care at Detention Facilities, to which
 10 Defendants are deliberately indifferent, resulting in a significant risk of substantial
 11 harm to detained individuals.

12 **D. Defendants Systemically Fail to Ensure Detained Individuals Receive**
 13 **Timely Emergency Health Care.**

14 307. Defendants have a systemic policy and practice of failing to monitor
 15 and ensure that Detention Facilities provide detained individuals with timely and
 16 competent emergency healthcare.

17 308. Detention Facilities repeatedly fail to treat medical emergencies with
 18 urgency by not timely calling 911, calling a correctional van rather than an
 19 ambulance to transport the detained individual to the emergency room, or refusing
 20 to take an individual to the hospital at all. Other deficiencies include refusals to
 21 administer emergency care and inabilities to administer emergency care because of
 22 missing equipment.

23
 24
 25 _____
 26 ²⁵² *Id.* at 22.

27 ²⁵³ *Id.*

28 ²⁵⁴ *Id.*

²⁵⁵ Human Rights Watch & CIVIC, *supra* note 181, at 36.

1 309. Detained individuals experience harm and unnecessary pain and
2 suffering as a result of these delays in emergency care. In a number of cases, these
3 delays have proven fatal.

4 310. Defendants are deliberately indifferent to the risk of harm and injury to
5 detained individuals from this systemic failure. Delays in providing emergency
6 treatment have been repeatedly documented, including without limitation in DDRs,
7 government reports, and reports by non-governmental organizations. Nonetheless,
8 Defendants fail to adequately administer, monitor, or oversee conditions in their
9 facilities—or institute meaningful changes to address the often-fatal delays in
10 emergency care that occur throughout their detention network—exposing Plaintiffs
11 and members of the Class to significant risk of serious harm.

12 311. Indeed, Defendants’ inadequate monitoring and oversight have
13 resulted in the placement of Detention Facilities in areas where emergency care is
14 essentially unavailable. According to OIG’s 2016 interview of a Health Services
15 Administrator, or HSA, at Stewart in Georgia, because of Stewart’s rural location,
16 “if there is a serious medical emergency, only a few community resources are
17 available; he recently had two local hospitals refuse to take a detainee with a
18 urology issue.” In addition, “there is an extreme shortage of ambulance services.”

19 312. Failure to ensure that competent and timely emergency care is
20 provided is a systemic problem that flows from Defendants’ deficient monitoring
21 and oversight. These failures place detained individuals at substantial risk of
22 serious harm in Detention Facilities throughout the country, as evidenced by the
23 following examples.

24 313. In September 2017, Plaintiff Martin Muñoz had an insulin overdose
25 when Adelanto staff administered more than triple his regular dose. An insulin
26 overdose can lead to a hypoglycemic coma—essentially a low-blood-sugar coma—
27 which can sometimes be fatal. Mr. Muñoz was taken to medical observation when
28

1 Adelanto staff realized the mistake, and Adelanto staff wrote him a letter admitting
2 fault.

3 314. Mr. Muñoz has gone without insulin twice while at Adelanto. The first
4 time, in February 2019, his medications ran out and, because his doctor had not
5 timely refilled his medication, he went without insulin for six days. During that
6 time, he had no energy, his vision was blurry, and he experienced headaches. The
7 second time, in summer 2019, he did not receive insulin for ten days because staff
8 said it was not in the system for him. In spring 2019, Adelanto informed Mr.
9 Muñoz that it had run out of his blood pressure medication, and he did not receive it
10 for approximately two weeks.

11 315. While at Adelanto, on information and belief Mr. Muñoz has not
12 received a modified diet to accommodate his diabetes, and his front tooth has fallen
13 out due to the progression of his diabetes.

14 316. Plaintiff Jose Segovia Benitez, for whom Adelanto had a documented
15 history of abnormal EKG results, reported significant chest pain at around 4 PM on
16 July 3, 2019. He was first evaluated for potential medical care nearly seven hours
17 later, at around 11 PM; over an hour later, Adelanto staff recognized Mr. Segovia
18 Benitez required emergency care and called 911 to have him transported to a nearby
19 hospital. Mr. Segovia Benitez ultimately spent several days in the hospital.

20 317. Defendants are on notice of, but have failed to remedy, the substantial
21 risk of serious harm posed by the failure to ensure competent and timely emergency
22 care. For example, between 2011 and 2019, DDRs documented failures in the
23 provision of emergency medical care at Detention Facilities across the country,
24 including Adelanto, Aurora, Elizabeth, Eloy, Essex County, Houston, Farmville,
25 Port Isabel, Krome, Rio Grande, San Bernardino, South Texas, Stewart, Theo Lacy,
26 Utah, and York County Detention Center (“York County”). In a substantial number
27 of the reviewed deaths, Detention Facilities provided Defendants with untimely or
28 inadequate emergency care. Several of these DDRs state explicitly that detained

1 individuals could have survived if they had been provided with timely access to
2 emergency care.

3 318. The DDRs describe staff's failure to treat detained individuals
4 experiencing medical emergencies with a sense of urgency. This is, in part, because
5 medical staff commonly fail even to recognize signs and symptoms of serious
6 medical conditions, resulting in deaths of detained people. Specific examples
7 include the following:

8 319. On July 10, 2018, Efrain De la Rosa died by suicide at Stewart.²⁵⁶
9 Earlier that day, Mr. De la Rosa told a social worker that he would die soon, yet he
10 was not placed on observation or given a higher level of care.²⁵⁷ Additionally,
11 responding nurses discovered that their medical bag was missing a defibrillator and
12 a working oxygen tank, which delayed attempts to revive Mr. De la Rosa.²⁵⁸ The
13 detention officer assigned to the medical unit did not hear the emergency call for
14 assistance.²⁵⁹

15
16 ²⁵⁶ Office of Professional Responsibility, *Detainee Death Review – Efrain Romero*
17 *De La Rosa*,
18 <https://www.ice.gov/doclib/foia/reports/ddrDeLaRosaEfrainRomero.pdf>.

19 ²⁵⁷ Robin Urevich, National Immigrant Solidarity Network, *Reports: Lies, Chaos*
20 *and Abuse at ICE Contractor Lockup*, Capital & Main (Jan. 28, 2019),
21 <https://capitalandmain.com/reports-lies-chaos-and-abuse-at-ice-contractor-lockup>;
22 Letter from Lead Compliance Inspector, The Nakamoto Grp., to Assistant Dir. for
23 Detention Mgmt. (May 3, 2018),
24 [https://www.ice.gov/doclib/facilityInspections/stewartDetCtrGA_CL_05_03_2018](https://www.ice.gov/doclib/facilityInspections/stewartDetCtrGA_CL_05_03_2018.pdf).
25 pdf.

26 ²⁵⁸ See, e.g., Robin Urevich, *Newly Released Documents Reveal Mounting Chaos*
27 *and Abuse at a Troubled ICE Detention Center*, Fast Company (Jan. 29, 2019),
28 [https://www.fastcompany.com/90298739/newly-released-documents-reveal-](https://www.fastcompany.com/90298739/newly-released-documents-reveal-mounting-chaos-and-abuse-at-a-troubled-ice-detention-center)
mounting-chaos-and-abuse-at-a-troubled-ice-detention-center; Memorandum from
Investigator, Camille Baptiste-Lowers, to Warden, Charlie Peterson (Aug. 6, 2018),
CoreCivic General Counsel Office of Investigations Investigation Report Form (on
file with Plaintiffs' counsel).

²⁵⁹ *Id.*

1 320. On December 2, 2017, Kamyar Samimi died while in custody at
2 Aurora after his withdrawal symptoms progressively worsened to the point that a
3 nurse observed that he likely had liver failure. In separate encounter, a nurse stated:
4 “He’s dying.”²⁶⁰ Yet, rather than calling 911, medical staff assumed he was faking
5 his symptoms.²⁶¹

6 321. On November 24, 2017, Mr. Samimi waited up to eleven hours to be
7 seen by a nurse, during which time he lost consciousness, vomited, and had
8 abnormally low oxygen saturation and an elevated heart rate.

9 322. On at least two occasions, nurses discovered that Mr. Samimi had not
10 eaten in days due to nausea; in the latter instance, he had collapsed in the hallway.
11 Their only response was to “educate” him on the importance of nutrition.

12 323. On November 30, Mr. Samimi appeared to have blood coming from
13 his mouth. The responding nurse ordered that Mr. Samimi be monitored and given
14 water, but the nurse did not notify a doctor that Mr. Samimi was bleeding, “which
15 was significant given his compromised condition.”²⁶²

16 324. On December 1, it took ten minutes for a nurse to respond to reports of
17 Mr. Samimi’s bizarre behavior and weakness, causing an officer to wonder “when
18 medical staff were going to come check on [Mr. Samimi].”²⁶³ When the nurse lifted
19 Mr. Samimi’s arm to take his blood pressure, he screamed and said it hurt so bad “I
20 just want to die.”²⁶⁴ The nurse told him to stop being difficult.²⁶⁵ Later, a nurse did
21 not respond until 75 minutes after Mr. Samimi was observed spitting up blood.²⁶⁶
22

23 _____
24 ²⁶⁰ Samimi DDR, *supra* note at 220, at 47.

25 ²⁶¹ *Id.*

26 ²⁶² *Id.*

27 ²⁶³ *Id.* at 43.

28 ²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

1 325. When an officer asked why 911 was not being called, “neither nurse
2 responded.”²⁶⁷ Only after Mr. Samimi vomited blood and officers acted on their
3 concern did a Lieutenant order a call to 911. The nurse had not called 911 himself
4 because he did not think Mr. Samimi’s condition was a “super emergency.”²⁶⁸

5 326. The DDR found problems with the intake process for Mr. Samimi and,
6 specifically, the fact that the facility “failed to transfer [Mr. Samimi] to an
7 [emergency room] though he exhibited life threatening withdrawal symptoms in the
8 week following his intake.”²⁶⁹ Additionally, the facility doctor failed to answer or
9 return two phone calls during Mr. Samimi’s medical emergency. Overall, “[a]ll
10 officers were troubled by what they perceived was a lack of concern and care for
11 [Mr. Samimi] on the part of medical staff.”²⁷⁰

12 327. On November 25, 2016, Wenceslau Esmerio Campos died of
13 myocardial infarction with atherosclerotic cardiovascular disease after an officer
14 refused to call for emergency help, even at request of another officer.²⁷¹ Mr.
15 Campos was detained at the South Texas facility.²⁷² On November 23, he was
16 found vomiting, pale, sweating, experiencing chest pains, and holding his chest.²⁷³
17 The DDR describes the initial response on behalf of detention security personnel:

18 Officer [REDACTED] approached CAMPOS in his bunk, located towards
19 the front of the dorm near the officer’s station, and observed he was pale and
20 sweating, and held his hands to his chest. Officer [REDACTED] immediately
21 asked Officer [REDACTED] to call a medical emergency on his radio,
22

23 ²⁶⁷ *Id.* at 47.

24 ²⁶⁸ *Id.* at 52.

25 ²⁶⁹ *Id.* at 3.

26 ²⁷⁰ *Id.* at 60.

27 ²⁷¹ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
28 *Death Review – Wenesclau Esmerio Campos*, at 1 (“Esmerio-Campos DDR”),
 <https://www.ice.gov/doclib/foia/reports/ddr-Campos.pdf>.

²⁷² *Id.*

²⁷³ *Id.* at 9.

1 telling him CAMPOS was having a heart attack, but Officer [REDACTED]
 2 refused, stating the detainee was fine because he could walk around. Officer
 3 [REDACTED] asked a second time, and Officer [REDACTED] again
 4 refused, so Officer [REDACTED] asked for the radio to call the emergency
 5 herself, but Officer [REDACTED] refused to give it to her. Officer
 6 [REDACTED] completed two incident reports following CAMPOS' death,
 7 wherein he stated he did not call a medical emergency or provide the radio to
 8 Officer [REDACTED] because he did not believe CAMPOS required
 9 emergency attention.²⁷⁴

10 328. Due to the officer's refusal to recognize Mr. Campos' medical
 11 emergency, an hour elapsed before he was taken to the hospital.²⁷⁵ Mr. Campos fell
 12 into cardiac arrest during transport.²⁷⁶ Despite attempts to revive him and an
 13 emergency surgery, Mr. Campos was pronounced dead two days later.²⁷⁷

14 329. On May 1, 2016, Igor Zyazin died of a heart attack while confined at
 15 Otay Mesa after being transferred from San Luis in Arizona.²⁷⁸ The cause of death
 16 was listed as hypertensive and atherosclerotic cardiovascular disease.²⁷⁹ The DDR
 17 notes that, while at San Luis, Mr. Zyazin informed staff that he had a significant
 18 medical history of heart disease and that he was experiencing symptoms of a heart
 19 attack.²⁸⁰ Instead of sending him to the emergency room, an ICE officer decided to
 20 transfer him to Otay Mesa, several hours away.²⁸¹ Upon arrival at Otay Mesa on
 21 April 29, Mr. Zyazin told a nurse that he was experiencing chest pain, but no
 22

23 ²⁷⁴ *Id.*

24 ²⁷⁵ *Id.* at 12.

25 ²⁷⁶ *Id.*

26 ²⁷⁷ *Id.* at 14.

27 ²⁷⁸ Zyazin DDR, *supra* note 238.

28 ²⁷⁹ *Id.*

²⁸⁰ *Id.* at 6.

²⁸¹ *Id.* at 8.

1 follow-up occurred.²⁸² The next day he was seen by a doctor, who failed to
 2 recognize that Mr. Zyazin had an event that may have been a heart attack.²⁸³ That
 3 evening he was found unresponsive and attempts to resuscitate him failed.²⁸⁴

4 330. Two medical experts who reviewed Mr. Zyazin's case on behalf of
 5 HRW found that his death was likely preventable. On April 29, the San Luis
 6 nurse's management of Mr. Zyazin at each step was severely deficient, including
 7 failing to inform a doctor or call 911. Further, by filling out a transfer note, the
 8 nurse was erroneously stating that the patient was stable enough for transfer,
 9 whereas sending him to the hospital for appropriate care could have saved his life.

10 331. On April 7, 2016, Rafael Barcenas Padilla died of bronchopneumonia
 11 while in ICE custody at Otero County.²⁸⁵ On March 13, Mr. Barcenas was taken to
 12 the medical unit with a fever of 104 degrees, a high pulse, and diminished oxygen
 13 saturation in his blood.²⁸⁶ A key medication, albuterol, was ordered to help his
 14 breathing, but the facility lacked the equipment to administer it due to depleted
 15 medical supplies.²⁸⁷ Mr. Barcenas did not see a doctor for two days.²⁸⁸ When he
 16 was finally seen by a doctor, the doctor decided to send him to the hospital.²⁸⁹
 17 Instead of being sent by ambulance, Mr. Barcenas waited for two hours to be
 18 transferred by correctional van.²⁹⁰ He was taken to the hospital, where his condition
 19 declined until his death.²⁹¹

20
 21 ²⁸² *Id.* at 7.

22 ²⁸³ *Id.* at 8.

23 ²⁸⁴ *Id.*

24 ²⁸⁵ Office of Professional Responsibility, *Office of Detention Oversight, Detainee Death Review – Rafael Barcenas Padilla*, at 1 (“Barcenas Padilla DDR”).

25 ²⁸⁶ *Id.* at 3–4.

26 ²⁸⁷ *Id.* at 4.

27 ²⁸⁸ *Id.* at 6–8.

28 ²⁸⁹ *Id.* at 8.

²⁹⁰ *Id.* at 8–9.

²⁹¹ *Id.* at 9–12.

1 332. The DDR found the lack of necessary equipment in Mr. Barcena's
2 case to be deficient medical care.²⁹² Independent medical experts found
3 fundamental errors in Mr. Barcena's medical treatment, concluding that proper care
4 may well have saved his life.²⁹³ The experts agreed that his low recorded oxygen
5 levels should have prompted immediate evacuation to a hospital.²⁹⁴ They also raised
6 concerns that he was sent to the hospital in a van instead of an ambulance.²⁹⁵

7 333. On December 24, 2015, Jose Manuel Azurdia-Hernandez died at
8 Adelanto. His cause of death was listed as cardiogenic shock, massive right
9 ventricular infarction, and severe ischemic heart disease. When he was found
10 vomiting in his cell on December 19, 2015, a nurse refused to treat him because she
11 "did not want to get sick."²⁹⁶ Medical staff did not return to check on his welfare,
12 and officers had difficulty reaching the medical unit when they tried multiple times
13 to alert medical staff to his worsening condition. When Mr. Azurdia-Hernandez was
14 finally taken to the hospital, arriving two hours after others in the housing unit first
15 tried to alert facility staff to his condition, his heart was too damaged to be repaired.

16 334. The DDR found that facility staff failed to triage Mr. Azurdia-
17 Hernandez. Medical experts for HRW concluded that proper, timely care could
18 have saved Mr. Azurdia-Hernandez's life, stating that "[t]ime is absolutely critical",
19 and "[d]uring a heart attack, every minute counts."²⁹⁷ Additionally, they found the
20

21 _____
22 ²⁹² *Id.* at 13.

23 ²⁹³ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
Center & Detention Watch Network, *supra* note 153, at 19–22.

24 ²⁹⁴ *Id.* at 21.

25 ²⁹⁵ *Id.* at 20–21.

26 ²⁹⁶ Professional Responsibility, Office of Detention Oversight, *Detainee Death*
Review- Jose Manuel Azurdia-Hernandez at 6–7 (2016) ("Azurdia-Hernandez
DDR"), <https://www.ice.gov/doclib/foia/reports/ddr-Azurdia.pdf>.

27 ²⁹⁷ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
Center & Detention Watch Network, *supra* note 153161, at 17.
28

1 nurse's refusal to see Mr. Azurdia-Hernandez to be "an egregious nursing
2 decision."²⁹⁸

3 335. In sum, Plaintiffs and the Class have suffered—and Plaintiffs and the
4 Class continue to be at substantial risk of serious harm—as a result of Defendants'
5 failure to provide adequate and timely emergency care. Despite multiple reports
6 documenting these deaths and the deficient emergency care involved, Defendants
7 persist in their systemic failure to monitor or oversee the provision of emergency
8 care to those in their custody.

9 **E. Defendants Systemically Fail to Ensure Adequate Physical and Mental**
10 **Health Intake Screening.**

11 336. At Detention Facilities across the country, Defendants fail to
12 adequately assess the physical and mental health needs of detained individuals
13 during intake, which leads to failure to identify and properly treat detained
14 individuals with such needs. Despite numerous reports documenting this failure at
15 multiple facilities, Defendants have taken no effective steps to ensure that detained
16 individuals receive appropriate health screening, exposing them to a significant risk
17 of serious harm. These problems continue to recur due to systemic deficiencies in
18 Defendants' oversight and monitoring practices and policies.

19 337. For example, when Plaintiff Jimmy Sudney arrived at Adelanto, it took
20 over a week to see a doctor for an intake meeting, and that doctor asked only about
21 his mental health. When he arrived at Eloy, it took almost a month to have an intake
22 screening. Meanwhile, he went without medication that he requires daily to
23 stabilize his medical and mental health needs.

24 338. Despite Plaintiff Luis Manuel Rodriguez Delgadillo's inability to self-
25 report serious mental health conditions upon intake at Adelanto, medical staff did
26 not make any efforts to secure his records or treatment plan from his treating
27

28 ²⁹⁸ *Id.* at 15.

1 psychiatrist, even though she is located nearby in California. Even when Mr.
2 Rodriguez Delgadillo's parents brought a letter from his prior psychiatrist to the
3 facility with a list of his medications, that list did not make it into his medical
4 records and, on information and belief, the letter was not conveyed to mental health
5 staff at Adelanto. Only recently, after Mr. Rodriguez Delgadillo wrote down his
6 medications with the help of his mother and took the list to mental health staff, did
7 he begin to receive his prior medications. He has had multiple acute psychiatric
8 episodes during this gap in continuity of care.

9 339. When Plaintiff Melvin Murillo Hernandez was transferred from
10 Tallahatchie to River, he informed intake staff at River that he was allergic to
11 peanuts, chocolate, and jam. Though the intake nurse at River noted the allergy,
12 medical staff did not ensure that he would receive food free of the allergens. As a
13 result, Mr. Murillo Hernandez went into life-threatening anaphylactic shock
14 requiring hospitalization three separate times over three months while at River. On
15 April 7, 2019, Mr. Murillo Hernandez was given a peanut butter and jelly
16 sandwich. As a result, his throat closed, he lost consciousness, and he was taken to
17 the local hospital emergency room. He was also hospitalized on May 5 and 6, 2019,
18 in response to anaphylaxis from his food allergies, and Mr. Murillo Hernandez
19 subsequently experienced at least two additional hospitalizations for anaphylaxis.
20 This failure to properly screen his medical issues and ensure appropriate referral
21 related to his severe food allergies put him Mr. Murillo Hernandez at risk of death.

22 340. Plaintiff Edilberto García Guerrero has a complex medical history. Yet
23 Aurora never requested Mr. García Guerrero's previous medical records regarding
24 his right ankle, for which he received orthopedic surgery about six years ago,
25 despite him experiencing a new injury to this ankle while in ICE custody.

26 341. Plaintiff Salazar Artaga's initial screenings at Florence, performed by
27 a nurse and social worker, detected no mental health issues. Two weeks later, on
28 March 26, 2019, he made a request for Risperidone, an anti-psychotic medication

1 he received previously. Mr. Salazar Artaga did not timely receive the medication,
 2 and he ended up on suicide watch twice over the next month for banging his head
 3 on the wall and auditory and visual hallucinations. He went without the medication
 4 until he finally had a mental health evaluation on April 17, 2019. As a result, he did
 5 not receive needed medication for over a month after he arrived at the facility.

6 342. The intake screening failures experienced by Plaintiffs are typical and
 7 are known to Defendants.

8 343. For example, in 2009, DHS released a report entitled “Immigration
 9 detention overview and recommendations,” which concluded that “[t]he current
 10 mental health intake assessment is quite brief and does not lend itself to early
 11 identification and intervention.”²⁹⁹

12 344. The report also concluded that, because ICE assigns detained
 13 individuals to facilities prior to completing medical screening, detained individuals
 14 with mental health disabilities are not always assigned to facilities where the
 15 staffing, proximity to emergency care, and physical space are most conducive to
 16 their conditions.³⁰⁰

17 345. Two years later, OIG published a report entitled “Management of
 18 Mental Health Cases in Immigration Detention.”³⁰¹ OIG reviewed intake forms for
 19 85 detained individuals with mental health disabilities and found that only ten of
 20 those forms included any notes relating to mental health observations during the
 21 intake process.³⁰²

22
 23 ²⁹⁹ U.S. Immigration & Customs Enforcement, Dep’t of Homeland Sec.,
 24 *Immigration Detention Overview and Recommendations*, at 25 (Oct. 6, 2009),
<https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

25 ³⁰⁰ *Id.* at 27.

26 ³⁰¹ Office of Inspector Gen., Dep’t of Homeland Sec., *OIG-11-62: Management of*
 27 *Mental Health Cases in Immigration Detention*, at 22 (Mar. 2011),
<https://www.hsdl.org/?abstract&did=6985>.

28 ³⁰² *Id.*

1 346. A 2016 GAO report found that, although detention standards require
2 facilities to conduct in-depth medical examinations within 14 days of arrival at a
3 facility, approximately a third of detained individuals surveyed stated that they had
4 not received those examinations.³⁰³

5 347. In 2016, a DHS OIG inspection of Stewart found staff shortages forced
6 the facility to operate against intake staffing policy.³⁰⁴ Staff also reported that
7 delays in getting transfer paperwork interfered with the timeliness of intake
8 screenings and classification.³⁰⁵

9 348. As a result of the systemic deficiencies in the intake screening process,
10 and Defendants' failure to properly monitor, oversee, and respond to those
11 deficiencies, individuals in Detention Facilities across the country have been
12 subjected to inadequate medical and mental health intake screenings.

13 349. DDRs illustrate the ongoing harms of these deficiencies in the intake
14 screening process.

15 350. During Sergio Alonso Lopez's intake interview at Adelanto on
16 February 10, 2017, a nurse noted that Mr. Lopez had hand tremors and fidgeted
17 during the screening, and the nurse determined that he was likely in withdrawal.
18 Although the intake screening form instructed that she should immediately notify a
19 provider and initiate an alcohol withdrawal assessment, she did not initiate the
20 assessment. Later that day, a doctor performed a physical examination of Mr. Lopez
21

22 ³⁰³ U.S. Gov't Accountability Office, *GAO-16-231, Additional Actions Needed to*
23 *Strengthen Management and Oversight of Detainee Medical Care*, at 50 (Feb.
24 2016), <https://www.gao.gov/assets/680/675484.pdf>.

25 ³⁰⁴ Office of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-18-32, *supra* note
26 152, at 3-4; *see also* Office of Inspector, Gen., U.S. Dep't of Homeland Sec., *Adult*
27 *Detention Oversight 16-047-ISP-ICE*,
[https://www.oig.dhs.gov/sites/default/files/assets/FOIA/OIG_FOIA_Stewart-](https://www.oig.dhs.gov/sites/default/files/assets/FOIA/OIG_FOIA_Stewart-Detention-Center-Work-Papers.pdf)
28 [Detention-Center-Work-Papers.pdf](https://www.oig.dhs.gov/sites/default/files/assets/FOIA/OIG_FOIA_Stewart-Detention-Center-Work-Papers.pdf).

³⁰⁵ *Id.*

1 without reviewing his previous medical records first. The DDR noted that this
 2 “hinder[ed] the physician’s ability to ensure continuity of treatment.” As such, his
 3 withdrawal from methadone was never listed on his “problem list,” which
 4 hampered the ability of nurses to subsequently treat his withdrawal.³⁰⁶ On April 13,
 5 2017, after a string of incorrect treatments, he died of internal bleeding.³⁰⁷

6 351. On June 2, 2016, Juan Luis Boch-Paniagua, while detained at LaSalle,
 7 died of a gastrointestinal hemorrhage.³⁰⁸ Mr. Boch-Paniagua’s DDR found that he
 8 received his intake health screening from an officer via an intake medical
 9 questionnaire, but there was no documentation showing that the intake officer had
 10 received necessary training to conduct a health screening. The intake officers also
 11 failed to use interpreters at Mr. Boch-Paniagua’s intake and classification.³⁰⁹
 12 Though Mr. Boch-Panigua reported his acetaminophen and ibuprofen allergy to
 13 medical staff, his “problem list” was left blank, causing medical staff to
 14 dangerously prescribe him 17 doses of acetaminophen and 50 doses of ibuprofen.³¹⁰

15 352. On April 28, 2016, José Leonardo Lemus Rajo died of acute alcohol
 16 withdrawal syndrome soon after being detained at Krome.³¹¹ His DDR identified
 17 numerous deficiencies in the intake process. First, though Mr. Lemus Rajo reported
 18 a history of daily heavy alcohol use, and that he was experiencing tremors as a
 19 symptom of withdrawal, a nurse documented that he “did not observe tremors,
 20 agitation, excessive sweating, bizarre or unusual behavior, or disorientation during
 21

22 ³⁰⁶ *Id.* at 17.

23 ³⁰⁷ *Id.*

24 ³⁰⁸ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
Death Review- - Juan Luis Boch-Paniagua at 18 (2016) (“Boch-Paniagua DDR”).

25 ³⁰⁹ *Id.* at 29.

26 ³¹⁰ *Id.* at 28.

27 ³¹¹ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
Death Review- - José Leonardo Lemus Rajo at 1 (2016) (“Lemus Rajo DDR”),
 28 <https://www.ice.gov/doclib/foia/reports/ddr-Lemus.pdf>.

1 the encounter.”³¹² Second, a doctor consulted over the phone ordered vitamins and a
 2 withdrawal assessment to be administered to Mr. Lemus Rajo, but the vitamins
 3 were never given to Mr. Lemus Rajo, even though they “may have counteracted the
 4 effects of malnutrition and slowed or arrested withdrawal aggression.”³¹³ Third, Mr.
 5 Lemus Rajo was kept in the intake area for over five hours, during which time “his
 6 alcohol withdrawal symptoms progressed rapidly” and he did not receive any
 7 medical monitoring,³¹⁴ which the DDR called “highly risky.”³¹⁵ A withdrawal
 8 assessment was not conducted until approximately five and a half hours after Mr.
 9 Lemus Rajo’s intake screening, and when it was finally administered, it showed
 10 that he was experiencing severe tremors, anxiety, agitation, and hallucinations.

11 353. The DDR concluded that the facility “delayed [Mr. Lemus Rajo’s]
 12 access to care by failing to conduct a baseline [withdrawal assessment] upon the
 13 detainee’s acknowledged heavy alcohol use and report of experiencing tremors,
 14 maintaining him in the intake area for a protracted period without medical
 15 monitoring, and failing to give him vitamins immediately.”³¹⁶

16 354. Two independent medical experts reviewing this case concluded that
 17 the DDR raised serious unresolved concerns about the quality of care given to Mr.
 18 Lemus Rajo during the intake process.³¹⁷ One of those doctors stated, “They had
 19 hours and hours to treat him. He was not treated until he got to the hospital.
 20 Delaying treatment for over seven hours with someone with serious alcohol
 21 withdrawal is a problem.” The other found, “Mr. Lemus reported very heavy
 22
 23

24 ³¹² *Id.* at 8.

25 ³¹³ *Id.* at 18.

26 ³¹⁴ *Id.* at 6.

27 ³¹⁵ *Id.* at 17.

28 ³¹⁶ *Id.*

³¹⁷ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice Center & Detention Watch Network, *supra* note 153, at 22–25.

1 alcohol use which—very predictably—led to alcohol withdrawal.³¹⁸ The failure of
2 the facility to administer medications to him promptly was significant.”³¹⁹

3 355. Jose de Jesus Deniz-Sahagun died by suicide on May 20, 2015, at
4 Eloy.³²⁰ The agents who transported Mr. Deniz to the facility on May 18 notified a
5 nurse that he had attempted suicide the day prior and that he had behaved erratically
6 earlier in the day, including banging his head, but these behaviors were not
7 documented in Mr. Deniz-Sahagun’s medical record.³²¹ During intake, Mr. Deniz-
8 Sahagun acknowledged his suicide attempt to the nurse.³²² Yet, because the intake
9 nurse wrote that Mr. Deniz-Sahagun “reported no mental health history and
10 appeared stable,”³²³ the nurse referred him for a routine, rather than urgent, mental
11 health evaluation the next day. Before receiving a full mental health screening, Mr.
12 Deniz-Sahagun got into an altercation with facility staff, who placed him in
13 segregation without medical clearance.³²⁴ Mr. Deniz-Sahagun died by suicide the
14 next day.³²⁵

15 356. In short, intake procedures in Detention Facilities are slapdash,
16 incomplete, and omit critical details like pain assessments, medication regimes, and
17 gathering of medical records. The deficiencies with the intake procedures have been
18 repeatedly documented, including without limitation in government and nonprofit
19 reports and DDRs. Nevertheless defendants, with deliberate indifference, have
20 failed to take effective measures to address these deficiencies.

22 ³¹⁸ *Id.* at 24.

23 ³¹⁹ *Id.*

24 ³²⁰ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
25 *Death Review- - Jose de Jesus Deniz-Sahagun* at 1 (2016) (“Deniz-Sahagun
26 DDR”).

27 ³²¹ *Id.* at 2.

28 ³²² *Id.*

³²³ *Id.* at 31.

³²⁴ *Id.* at 32.

³²⁵ *Id.* at 24.

F. Defendants Systemically Fail to Ensure Adequate Staffing of Medical and Mental Health Care.

357. Detention Facilities across the country are chronically and consistently understaffed with medical and mental health care personnel. Despite numerous reports documenting this, Defendants have taken no effective steps to ensure that Detention Facilities have appropriate medical and mental health care staffing, exposing detained individuals to significant risk of serious harm.

358. The staffing shortages are systemic and cause dangerous delays in the provision of medical care, as well as treatment by unqualified personnel. The shortages have been documented by Defendants' own entities repeatedly, with one DDR concluding that "[a]dequate staffing by medical professionals of appropriate levels is critical to ensuring the healthcare needs of detainees are met in a timely manner."³²⁶ Nevertheless, this systemic practice of dangerous short-staffing persists.

359. For example, at Adelanto, nursing staff are sometimes required to act beyond their scope because of the unavailability of an attending physician. Plaintiff Faour Abdallah Fraihat has twice experienced emergency episodes including sharp chest pain, difficulty breathing, and an elevated heart rate. Both times, an Adelanto physician assistant called a "code blue" and called for an ambulance because no attending physician was available. Both times, Mr. Fraihat was admitted to the hospital for several weeks.

360. When Mr. Fraihat meets with a doctor at Adelanto, the doctor sets a timer for five to ten minutes. The doctor tells Mr. Fraihat that she is setting a timer because "we have a lot of people in here."

361. Plaintiff Luis Manuel Rodriguez Delgadillo sees a constantly shifting cast of characters among the mental health providers at Adelanto and has not

³²⁶ Office of Professional Responsibility, *Detainee Death Review – Lelis Rodriguez*, at 12, <https://www.ice.gov/doclib/foia/reports/ddr-rodriguez.pdf>.

1 formed a trusting treating relationship with any of them. For a concrete thinker like
 2 Mr. Rodriguez Delgadillo, seeing a rotating series of providers in person and
 3 through tele-psychiatry has profound implications for his ability to communicate
 4 his mental health state and receive proper treatment.

5 362. Plaintiff García Guerrero has experienced the effects of short-staffing
 6 at Aurora, where there is only one doctor on staff, despite a new contract in April
 7 2019 increasing the facility's capacity from approximately 900 to more than 1,400
 8 beds. Plaintiff García Guerrero's requests for medical attention have received even
 9 slower responses since the expansion.

10 363. Defendants are well aware of the long-standing, systemic staffing
 11 shortages at their facilities.

12 364. For example, in July 2019, four Colorado politicians visited Aurora
 13 and reported that, in addition to a psychologist vacancy, senior positions in the
 14 health unit, including the top two positions of Health Services Administrator and
 15 deputy HSA, were vacant.³²⁷

16 365. On November 27, 2016, Raquel Calderon de Hidalgo became the
 17 fifteenth person to die while in custody at Eloy in Arizona.³²⁸ Her cause of death
 18 was a pulmonary embolism due to deep vein thrombosis.³²⁹ On November 23,
 19 2016, an intake nurse recommended that Ms. Calderon de Hidalgo be seen by a
 20 provider that same day, as she had recently suffered a leg injury and was still
 21
 22

23 ³²⁷ Blair Miller & Russell Haythorn, *Colorado's Congressional Democrats Tour*
 24 *Aurora ICE Facility, Call for Changes*, The Denver Channel (July 22, 2019)
 25 [https://www.thedenverchannel.com/news/politics/colorados-congressional-](https://www.thedenverchannel.com/news/politics/colorados-congressional-democrats-tour-aurora-ice-facility-call-for-changes-and-its-closure)
[democrats-tour-aurora-ice-facility-call-for-changes-and-its-closure](https://www.thedenverchannel.com/news/politics/colorados-congressional-democrats-tour-aurora-ice-facility-call-for-changes-and-its-closure).

26 ³²⁸ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
 Center & Detention Watch Network, *supra* note 153161, at 36.

27 ³²⁹ Office of Professional Responsibility, *Detainee Death Review – Raquel*
 28 *Calderon De-Hidalgo*, <https://www.ice.gov/doclib/foia/reports/ddr-Calderon.pdf>.

1 experiencing pain.³³⁰ The appointment was delayed until November 25, at which
 2 point the scheduled physical exam did not occur, because Ms. Calderon de Hidalgo
 3 had recently been quarantined for potential exposure to varicella and the nurse
 4 practitioner was too busy to leave the clinic.³³¹ Her physical exam was never
 5 rescheduled.³³² On November 26, Ms. Calderon de Hidalgo waited approximately
 6 five hours at the clinic to see a provider for related issues, yet she was sent back to
 7 her unit by an officer who erroneously believed she had been seen already.³³³ The
 8 next day, Ms. Calderon de Hidalgo collapsed and had a seizure.³³⁴ She later died of
 9 a blood clot that had developed from her leg injury.³³⁵

10 366. The DDR found that the facility failed to provide timely and
 11 appropriate medical care and medical assessment to Ms. Calderon de Hidalgo, and
 12 that although a registered nurse “identified [Ms. Calderon de Hidalgo] as a patient
 13 requiring expedited provider attention . . . [Ms. Calderon de Hidalgo’s] first and
 14 only contact with a provider was during her medical emergency, four days after her
 15 arrival.”³³⁶ Two independent experts concluded that if a doctor had actually seen
 16 Ms. Calderon de Hidalgo when she requested a visit several days before her death,
 17 there may have been a different outcome, and that failure of a health provider to
 18 examine her when she was referred as a high priority patient constituted a
 19 dangerous and potentially fatal medical care practice.³³⁷

22 ³³⁰ *Id.* at 3.

23 ³³¹ *Id.* at 5.

24 ³³² *Id.* at 5.

25 ³³³ *Id.* at 6–7.

26 ³³⁴ *Id.* at 7.

27 ³³⁵ *Id.* at 11.

28 ³³⁶ *Id.* at 11.

³³⁷ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice Center & Detention Watch Network, *supra* note 153161, at 37.

1 367. In June 2019, the American Immigration Council (“AIC”) and
 2 American Immigration Lawyers Association (“AILA”) issued a complaint
 3 regarding inadequate medical and mental health care at Aurora.³³⁸ Reiterating
 4 concerns expressed in a 2018 complaint, which had yet to be addressed by ICE, this
 5 complaint illustrated the ongoing problem of inadequate care given to detained
 6 individuals.³³⁹ Specifically, the AIC and AILA complaint emphasized that the
 7 recent expansion of Aurora has made conditions there measurably worse, with 432
 8 beds added to the facility without sufficient staffing to manage the growing
 9 population.³⁴⁰

10 368. According to a March 2019 complaint filed by Project South,
 11 CoreCivic’s staffing levels were so low that immigrants at Stewart were forced to
 12 request medical attention at four in the morning or receive none at all.³⁴¹

13 369. In a communication signed by an ICE official on January 25, 2017,³⁴²
 14 ICE noted it “urgently requires” on-site medical staffing support services at Stewart
 15 and Berks County, and that the facilities were in “critical need of RN staffing to
 16 sustain operations at each site.”³⁴³ The document also stated that Public Health
 17 Service positions at Stewart were staffed at only 20% of the fill rate, and that
 18 “ICE’s failure to sustain minimum RN staffing levels will require healthcare
 19
 20

21 ³³⁸ Email from Am. Immigration Council & Am. Immigration Lawyers Ass’n, to
 22 Stewart D. Smith, Assistant Dir., ICE Health Servs. Corps., et al. (June 11, 2019)
 (on file with Plaintiffs’ Counsel).

23 ³³⁹ *Id.* at 1.

24 ³⁴⁰ *Id.* at 1–2.

25 ³⁴¹ Compl. For Declaratory and Inj. Relief at 5, Project South v. U.S. Immigr. and
 Customs Enf’t, No. 1:19-cv-895-APM (D.C. Mar. 29, 2019) ECF No. 3-1.

26 ³⁴² Justification for Other than Full and Open Competition, Ex. A to Compl. For
 27 Declaratory and Inj. Relief, Project South v. U.S. Immigr. and Customs Enf’t, No.
 1:19-cv-00895 (ECF No. 1-4).

28 ³⁴³ *Id.* at 1–2.

1 services to be reduced at each facility; endangering detainee and non-detainee
2 safety”³⁴⁴

3 370. In 2016 and 2017, researchers for the Women’s Refugee Commission
4 visited seven detention facilities in Texas, California, Arizona, and New Mexico.³⁴⁵
5 They found that the staffing for medical and mental health was inadequate.³⁴⁶ At
6 best, the research team observed a staffing ratio of roughly one mid-level provider
7 per 100 detained individuals, at Hutto Detention Center (“Hutto”).³⁴⁷ At worst, the
8 Joe Corley facility had one full-time physician and one full-time nurse practitioner
9 for over 1,500 people.³⁴⁸ In addition, all seven facilities had insufficient levels of
10 mental health care staffing.³⁴⁹ At Laredo, there was no full-time mental health
11 service provider.³⁵⁰

12 371. In 2011, OIG issued a report entitled “Management of Mental Health
13 Cases in Immigration Detention,”³⁵¹ which followed a 2009 DHS report
14 documenting systemic issues related to mental health care, including inadequate
15 staffing. Focusing on 18 facilities staffed by the ICE Health Service Corps, the
16 report made the following relevant findings: (1) IHSC has “experienced persistent
17 vacancies in mental health positions which have raised concerns about the
18 effectiveness of provider care”; (2) vacancy rates in mental health positions at 11 of

19 ³⁴⁴ *Id.* at 2.

20 ³⁴⁵ Women’s Refugee Comm’n, *Prison for Survivors, the Detention of Women*
21 *Seeking Asylum in the United States*. (Oct. 2017),
22 [file:///C:/Users/ADiaz/Downloads/Prison-for-Survivors-REPORT-](file:///C:/Users/ADiaz/Downloads/Prison-for-Survivors-REPORT-FINAL%20(3).pdf)
[FINAL%20\(3\).pdf](file:///C:/Users/ADiaz/Downloads/Prison-for-Survivors-REPORT-FINAL%20(3).pdf).

23 ³⁴⁶ *Id.* at 30, 31.

24 ³⁴⁷ *Id.* at 30.

25 ³⁴⁸ *Id.* at 31.

26 ³⁴⁹ *Id.*

27 ³⁵⁰ *Id.*

28 ³⁵¹ Office of Inspector Gen., Office of Homeland Sec., *OIG-11-62: Management of*
Mental Health Cases in Immigration Detention (2011),
https://www.oig.dhs.gov/assets/Mgmt/OIG_11-62_Mar11.pdf.

1 the 18 facilities staffed with IHSC employees were 50% or more; (3) ICE failed to
 2 allocate mental health staff in accordance with the needs of facilities—for example,
 3 the only mental health staff allocated at two facilities was one social worker, even
 4 though those facilities housed 76 and 59 detained individuals with mental health
 5 disabilities; (4) to compensate for short-staffing, “facilities without a psychiatrist
 6 must rely on other medical professionals qualified to prescribe any medications,
 7 even though they may not be knowledgeable of specific psychiatric medications”;
 8 and (5) some facilities were located in remote locations without access to third-
 9 party providers of mental health care.³⁵²

10 372. According to that same report, “IHSC officials from headquarters and
 11 field locations cited staffing shortages as a critical challenge. In addition, health
 12 service administrators and clinical directors throughout IHSC expressed the need
 13 for more mental health providers.”³⁵³

14 373. In 2016, OIG issued another Mental Health Staffing Report,
 15 concluding that ICE continued to fail to attract and retain adequate qualified mental
 16 health care providers, at least in part due to the “rural and remote” areas where
 17 Defendants have elected to detain individuals.³⁵⁴

18 374. That same year, the HSA at Stewart told an OIG inspector that the
 19 facility had “chronic shortages of almost all medical staff positions.”³⁵⁵
 20 Specifically, Stewart at the time was staffed with only “18 of 25 Registered Nurses;
 21
 22

23 ³⁵² *Id.* at 1, 8, 11, 16,

24 ³⁵³ *Id.* at 8.

25 ³⁵⁴ Office of Inspector Gen., Office of Homeland Sec., OIG-16-113-VR: ICE Still
 26 Struggles to Hire and Retain Staff for Mental Health Cases in Immigration
 Detention, at 2 (2016), [https://www.oig.dhs.gov/assets/VR/FY16/OIG-16-113-VR-](https://www.oig.dhs.gov/assets/VR/FY16/OIG-16-113-VR-Jul16.pdf)
[Jul16.pdf](https://www.oig.dhs.gov/assets/VR/FY16/OIG-16-113-VR-Jul16.pdf).

27 ³⁵⁵ Office of Inspector Gen., Office of Homeland Sec., *FOIA Response No. 2018-*
 28 *IGFO-00059*, *supra* note 104, at 34.

1 8 of 11 Licensed Practical Nurses; 2 of 3 License Clinical Social Workers; no
 2 Psychiatrists; and 1 of 2 Medical Doctors.”³⁵⁶

3 375. A 2017 report by HRW³⁵⁷ described the experience of Dr. John Rubel,
 4 a clinical psychologist with decades of experience in the federal Bureau of Prisons,
 5 who spent two years providing mental health services at Hutto Detention Center in
 6 Texas. Dr. Rubel found a tremendous need for mental health care, but trying to
 7 provide it at Hutto eventually posed an “ethical and moral dilemma”³⁵⁸ that led him
 8 to leave. Dr. Rubel described the prevalence of trauma in the facility, which housed
 9 more than 500 women, as “extremely high,” saying, “it’s not just a single event [for
 10 these women], but multiple episodes of trauma.”³⁵⁹ Despite the great need, mental
 11 health staff at the facility consisted of one to two full-time staff members and one
 12 half-time staff member. Without more mental health staff, he said, it was
 13 impossible to provide the comprehensive mental health services required under
 14 IHSC policy.³⁶⁰

15 376. A 2017 Penn State Law report also found understaffing issues at Irwin
 16 County Detention Center (“Irwin”). Although the facility’s website³⁶¹ lists a
 17 capacity of 1,201 individuals, the report found that these individuals had infrequent
 18 access to only one doctor, who worked at the facility part-time.³⁶² At Victorville
 19 Federal Correctional Complex, ICE detained 1,000 individuals despite protestations
 20

21 ³⁵⁶ *Id.*

22 ³⁵⁷ Human Rights Watch & CIVIC, *supra* note 181.

23 ³⁵⁸ *Id.* at 72.

24 ³⁵⁹ *Id.* (internal citation omitted).

25 ³⁶⁰ *Id.*

26 ³⁶¹ *Our Locations*, LaSalle Corrections,
 27 [http://www.lasallecorrections.com/locations/georgia/irwin-county-detention-](http://www.lasallecorrections.com/locations/georgia/irwin-county-detention-center/?back=locations)
 28 [center/?back=locations](http://www.lasallecorrections.com/locations/georgia/irwin-county-detention-center/?back=locations).

³⁶² *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers*, Penn
 State Law, at 47–48 (May 2017) [https://projectsouth.org/wp-](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf)
[content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

1 by the local facility employee union there that an existing medical staffing shortage
 2 would cause some detained individuals to go without treatment.³⁶³ In 2018, a
 3 former CoreCivic training officer at Otay Mesa testified in a wrongful death suit
 4 brought by the estate of a former detained individual there that short-staffing
 5 hindered officers' ability to notice when detained individuals required medical care
 6 and a referral to the medical unit.³⁶⁴

7 377. The systemic deficiencies in staffing at Detention Facilities, and
 8 Defendants' failure to address those deficiencies, have put detained individuals
 9 across the country at significant risk of serious harm.

10 378. On December 2, 2017, Kamyar Samimi died of methadone withdrawal
 11 at Aurora.³⁶⁵ His DDR found that the facility had vacancies in key medical
 12 personnel, including a Director of Nursing and a mid-level provider, for longer than
 13 six months.³⁶⁶ The DDR also found a high turnover of staff and slow hiring
 14 processes.³⁶⁷

15 379. Additionally, the absence of a midlevel provider contributed to the
 16 facility's failure to provide a complete initial physical assessment of Mr. Samimi.³⁶⁸
 17 A doctor interviewed for the Medical and Security Compliance Analysis portion of
 18 the DDR³⁶⁹ stated that, due to the vacancies, it was likely there were other detained
 19

20 ³⁶³ Samantha Michaels, *Understaffed Federal Prison Is Taking in 1,000*
 21 *Noncriminal Immigrants, and Even the Guards Are Protesting*, Mother Jones, (June
 22 15, 2018) <https://www.motherjones.com/crime-justice/2018/06/understaffed-federal-prison-is-taking-in-1000-noncriminal-immigrants-and-even-the-guards-are-protesting/>.

23 ³⁶⁴ McGinnis Dep. at 162:24-164:7, *Estate of Cruz-Sanchez by & through Rivera v.*
 24 *United States*, No. 317-cv--00569-AJB--NLS, 2017 WL 9853749, ECF No. 67-1
 (S.D. Cal. Oct. 4, 2017).

25 ³⁶⁵ Samimi DDR, *supra* note 220.

26 ³⁶⁶ *Id.* at 25.

27 ³⁶⁷ *Id.* at 59.

28 ³⁶⁸ *Id.* at 26.

³⁶⁹ *Id.*

1 individuals with significant medical problems whose initial examinations were
 2 conducted by registered nurses.³⁷⁰ In addition, as a result of the facility's lack of a
 3 Director of Nursing or other nurse supervisor, "clinical supervision was inadequate
 4 to assure adherence to provider orders and necessary and appropriate care."³⁷¹

5 380. Moises Tino Lopez died in September 2016 while detained at Hall
 6 County Jail in Nebraska.³⁷² The DDR identified a number of serious staffing
 7 problems, including that the facility's mid-level provider, a nurse practitioner, only
 8 provided one to three hours of coverage per week, making it "a challenge to
 9 conduct patient encounters and review telephone orders and diagnostic reports
 10"³⁷³ The facility physician "is located in Peoria, Illinois [and] provides no on-
 11 site services or supervision of the [nurse practitioner] beyond remotely reviewing
 12 her orders every three months."³⁷⁴ The facility also lacked any on-site registered
 13 nurses to provide administrative oversight of health care operations or clinical
 14 supervision of licensed practical nurses.³⁷⁵ This staffing shortage likely led to
 15 delays in evaluation and medical staff doing jobs for which they were not qualified,
 16 as the facility improperly had a licensed nurse practitioner assess Mr. Tino
 17 Lopez.³⁷⁶

21 ³⁷⁰ *Id.* at 7.

22 ³⁷¹ *Id.* at 63.

23 ³⁷² Office of Professional Responsibility, *Detainee Death Review – Moises Tino-*
 24 *Lopez*, [https://d1zbh0am38bx6v.cloudfront.net/wp-](https://d1zbh0am38bx6v.cloudfront.net/wp-content/uploads/2018/07/17044550/ddr-Tino.pdf)
[content/uploads/2018/07/17044550/ddr-Tino.pdf](https://d1zbh0am38bx6v.cloudfront.net/wp-content/uploads/2018/07/17044550/ddr-Tino.pdf).

25 ³⁷³ *Id.* at 14–15.

26 ³⁷⁴ *Id.* at 14.

27 ³⁷⁵ *Id.* at 15.

28 ³⁷⁶ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
 Center & Detention Watch Network, *supra* note 153161, at 31.

1 381. Igor Zyazin died in May 2016 while detained at Otay Mesa.³⁷⁷ He was
2 previously detained at the San Luis Detention Center. The DDR found that,
3 notwithstanding that “oversight of clinical decision making, and care is critical in a
4 correctional health care operation,” San Luis did not have a designated clinical
5 medical authority or physician coverage.³⁷⁸

6 382. Jose Manuel Azurdia-Hernandez died in December 2015 while
7 detained at Adelanto in California.³⁷⁹ The DDR found the facility had an ongoing
8 shortage of medical personnel, including leadership vacancies in the director of
9 nurses and the assistant HSA positions, five registered nurse vacancies, and a “high
10 turnover rate among nursing staff, which impacts delivery and quality of care.”³⁸⁰ It
11 also found that the facility had had two different HSAs since October 2014, the first
12 of whom moved to the assistant HSA position and was on administrative leave at
13 the time of the DDR.³⁸¹

14 383. Raul Ernesto Morales-Ramos died in April 2015 while detained at
15 Adelanto.³⁸² According to the DDR, “many members of [Adelanto’s] medical staff
16 [stated] that a high turnover rate among nurses is of great concern, particularly
17 given an increasing population of detainees with chronic health care needs.”³⁸³ The
18 facility has difficulty recruiting and retaining nurses, which necessitates hiring new
19 graduates with minimal experience; approximately 50 percent of Adelanto’s
20 medical staff are new graduates, with “a definite difference between their skills and
21

22 ³⁷⁷ Office of Professional Responsibility, *Detainee Death Review – Igor Zyazin*,
23 <https://www.ice.gov/doclib/foia/reports/ddr-Zyazin.pdf>.

24 ³⁷⁸ *Id.* at 11.

25 ³⁷⁹ Office of Professional Responsibility, *Detainee Death Review – Jose Manuel*
Azurdia-Hernandez, <https://www.ice.gov/doclib/foia/reports/ddr-Azurdia.pdf>.

26 ³⁸⁰ *Id.* at 16.

27 ³⁸¹ *Id.* at 16.

28 ³⁸² Raul Ernesto Morales-Ramos DDR, *supra* note 158.

³⁸³ *Id.* at 37.

1 those of more experienced nurses.”³⁸⁴ Additionally, two doctors at Adelanto
 2 reported that there is a great variation in nursing skills among current nursing
 3 staff.³⁸⁵

4 384. Lelis Rodriguez died in July 2013, shortly after being transferred from
 5 the Brooks County Detention Facility to the Rio Grande Detention Facility, both in
 6 Texas.³⁸⁶ The DDR determined that the Brooks County facility had significant
 7 staffing problems, including that medical staff consisted of mostly low-level
 8 medical personnel without appropriate clinical oversight, that a physician was
 9 present only two hours per week, and that the facility lacked mental health staff,
 10 physicians assistants, and nurse practitioners.³⁸⁷ The DDR noted that “[a]dequate
 11 staffing by medical professionals of appropriate levels is critical to ensuring the
 12 healthcare needs of detainees are met in a timely manner.”³⁸⁸

13 385. Another detainee, Federico Mendez Hernandez, died at this same
 14 facility just one month earlier, in June 2013.³⁸⁹ The DDR determined that, although
 15 there were more than 25,000 detainee admissions to Brooks County during 2013,
 16 and although the facility had 63 chronic care patients, a physician was present at the
 17 facility for only two hours each week.³⁹⁰ There were no physician assistants, nurse
 18 practitioners, or mental health staff at the facility. Most medical care was provided
 19 by low-level medical professionals, and oversight and clinical supervision of onsite
 20 medical staff was limited to services that could be provided by the physician and

21 ³⁸⁴ *Id.*

22 ³⁸⁵ *Id.*

23 ³⁸⁶ Office of Professional Responsibility, *Detainee Death Review – Lelis Rodriguez*,
 24 <https://www.ice.gov/doclib/foia/reports/ddr-rodriguez.pdf>.

25 ³⁸⁷ *Id.* at 12.

26 ³⁸⁸ *Id.*

27 ³⁸⁹ Office of Professional Responsibility, *Detainee Death Review – Federico*
 28 *Mendez-Hernandez*, [https://www.ice.gov/doclib/foia/reports/ddr-](https://www.ice.gov/doclib/foia/reports/ddr-mendezhernandez.pdf)
[mendezhernandez.pdf](https://www.ice.gov/doclib/foia/reports/ddr-mendezhernandez.pdf).

³⁹⁰ *Id.* at 12.

1 the HSA, who was a registered nurse.³⁹¹ According to the DDR, “Nursing staff
 2 reported they believe demanding work schedules and the heavy workload
 3 contributed to the abbreviated clinical assessments and inadequate documentation
 4 in the medical record of [Mr. Mendez Hernandez].”³⁹²

5 386. Pablo Gracida-Conte, held at Eloy in Arizona, died in October 2011.³⁹³
 6 Many detained individuals at Eloy had extensive medical needs. For example, the
 7 HSA stated that a quarter of the facility’s population had chronic care issues, and
 8 that the number of detained individuals requiring higher levels of care was
 9 increasing.³⁹⁴ According to a facility nurse, there were up to 110 sick call
 10 encounters per day, and the facility was grossly understaffed to handle these
 11 needs.³⁹⁵ A facility doctor reported that “she badly needs help.”³⁹⁶ Further, at the
 12 time of Mr. Gracida-Conte’s death, mid-level practitioners were understaffed by
 13 17%, nursing was understaffed by 25%, physicians were understaffed by 50%, and
 14 the facility had no clinical director for four of the five years it had been open.³⁹⁷
 15 ICE was fully aware of this problem; the Assistant Field Office Director, an
 16 employee of ICE, stated that she had been aware of the staffing issues since
 17 assuming her post in April 2011.³⁹⁸

18 387. Staffing shortages are persistent, systemic, and dangerous to detained
 19 individuals throughout Defendants’ network of Detention Facilities. Despite being
 20 on notice for years of these staffing shortages and the risks that they pose to people
 21

22 ³⁹¹ *Id.*

23 ³⁹² *Id.*

24 ³⁹³ Office of Professional Responsibility, *Detainee Death Review – Pablo Gracida-*
 25 *Conte*, [https://www.documentcloud.org/documents/2695513-Gracida-Conte-](https://www.documentcloud.org/documents/2695513-Gracida-Conte-Pablo.html#document/p1/a272669)
[Pablo.html#document/p1/a272669](https://www.documentcloud.org/documents/2695513-Gracida-Conte-Pablo.html#document/p1/a272669).

26 ³⁹⁴ *Id.* at 13.

27 ³⁹⁵ *Id.* at 14.

28 ³⁹⁶ *Id.* at 13.

³⁹⁷ *Id.* at 13–14.

³⁹⁸ *Id.* at 14.

1 in their custody, Defendants with deliberate indifference have failed to effectively
2 monitor or oversee this issue or take measures to eliminate it.

3 **G. Defendants Systemically Fail to Ensure Adequate Mental Health Care.**

4 388. At Detention Facilities across the country, detained individuals receive
5 substandard mental health care. Despite numerous reports documenting this fact,
6 and litigation substantiating it, Defendants have taken no effective steps to ensure
7 that detained individuals receive appropriate mental health care, exposing Plaintiffs
8 and the Class to significant risk of serious harm.

9 389. The problem of substandard mental health care is systemic, occurring
10 at Detention Facilities across the country, and continuing to occur due to systemic
11 deficiencies in Defendants' oversight and monitoring practices and policies.

12 390. Plaintiff Jimmy Sudney has mental health disabilities including PTSD
13 from the earthquake in Haiti. Though he arrived at Eloy with a thirty-day supply of
14 medication which had stabilized him while he was in prison, he was told he could
15 not continue with that medication because "ICE has a different standard." While
16 detained at Eloy, Mr. Sudney had only one 30 to 60-minute session per month. At
17 Adelanto, therapy further decreased to once every month or two, for five to fifteen
18 minutes each session. He now has difficulty sleeping and regularly experiences
19 flashbacks to violence and the earthquake in Haiti, especially after the recent
20 Southern California earthquakes, after which his requests for mental health care
21 went unanswered.

22 391. Plaintiff Hamida Ali had a history of schizophrenia and suicidal
23 ideation prior to coming into ICE custody, but she was nonetheless housed in
24 Aurora alone in a dormitory designed for dozens of people, leaving her completely
25 isolated for approximately nine months. Her mental health symptoms grew worse,
26 yet no steps were taken to move her or otherwise mitigate her symptoms. Upon
27 information and belief, ICE made no attempt to obtain her prior treatment or
28

1 custodial records. When she was transferred within ICE custody from Aurora to
2 Teller, medical staff at Teller did not receive any of her medical records from
3 Aurora.

4 392. Plaintiff Luis Manuel Rodriguez Delgadillo, who has had diagnoses of
5 schizophrenia and bipolar disorder for years, and who was taking medication and
6 feeling stable prior to his detention, has noticed his mental health significantly
7 decline since his detention at Adelanto in March 2019. He has been repeatedly
8 placed in medical observation after expressing suicidal and other harmful ideation,
9 and he has not received the same medication he was taking prior to his detention,
10 nor any of the therapy or other support services he had in place.

11 393. Plaintiff Alex Hernandez is diagnosed with PTSD, for which he was
12 receiving treatment prior to his placement in ICE custody. While detained at Mesa
13 Verde and Otay Mesa, he received psychotropic medication to treat his PTSD.
14 When Mr. Hernandez was transferred to Etowah in December 2018, his medication
15 to treat his PTSD was abruptly stopped without explanation. As a result, he
16 experienced night sweats, irritable and aggressive behavior, hypervigilance,
17 difficulty sleeping, feelings of hopelessness, and emotional numbness.

18 394. Mr. Hernandez did not meet with a psychiatrist until February 2019, at
19 least two months after he arrived at Etowah. He was then diagnosed with anti-social
20 personality disorder, without any basis for that diagnosis in his medical records. He
21 was not prescribed any medication to treat his mental health needs until on or
22 around July 9, 2019, and he did not begin receiving the medication until on or
23 around July 22, 2019. He has not received any therapy or counseling in Etowah.

24 395. Prior to detention, Plaintiff Jose Segovia Benitez received mental
25 health care through the Veteran's Administration to manage his combat PTSD and
26 other mental health diagnoses. However, since being detained at Adelanto, his
27 combat PTSD has become unmanageable in a way that affects his ability to control
28 his emotions and anger.

1 396. Plaintiff Marco Montoya Amaya has also had inconsistent mental
2 health treatment, often at odds with the recommendations of the mental health
3 providers at the facilities in which he was detained. For example, when he was first
4 transferred to Mesa Verde in March 2019, a therapist indicated that he should
5 receive follow-up talk therapy in two weeks; however, despite his prior diagnoses
6 of Major Depressive Disorder and severe PTSD, he did not have another talk
7 therapy appointment until two months later, in May 2019. Rather than provide
8 assistance for his mental health conditions, a therapist repeatedly told Mr. Montoya
9 Amaya that she thought he would and should be deported.

10 397. Plaintiff Salazar Artaga has been hearing voices, experiencing visual
11 hallucinations, and grappling with suicidal ideation from the time he was a
12 teenager. He also suffers from severe anxiety that has manifested as panic attacks
13 in his time in detention. He requested mental health care early in his time at
14 Florence. He has been put on suicide watch at least two times for banging his head
15 against the wall and picking at his wounds in the midst of panic attacks. However,
16 the psychologist he saw did not refer him to a psychiatric provider until weeks later,
17 apparently suspecting that Mr. Salazar Artaga was seeking secondary gain. Even
18 now, when Mr. Salazar Artaga tells officers he is having a panic attack and hearing
19 voices, they often ridicule or ignore him and refuse to call for medical assistance.

20 398. These problems are not unique to Plaintiffs but are pervasive
21 throughout Defendants' Detention Facilities.

22 399. For example, Disability Rights California's 2019 report concerning
23 Adelanto³⁹⁹ identified many people at the facility with serious mental health needs
24 who received deficient mental health treatment. DRC found that the facility
25 responds harshly and in non-therapeutic ways to people in psychiatric crisis, such
26 as with the use of pepper spray or extreme isolation.⁴⁰⁰

27 _____
28 ³⁹⁹ Disability Rights Cal., *supra* note 36.

⁴⁰⁰ *Id.* at 20.

1 400. Further, the “treatments” prescribed to detained individuals—even as
2 their mental health conditions declined—often consist only of breathing exercises,
3 physical exercise, and religious coping.⁴⁰¹

4 401. DRC identified key deficiencies, including (1) cursory clinical contacts
5 and non-individualized treatment, (2) a lack of structured programming and
6 activities, (3) harmful institutional responses to patients in psychiatric crisis, and (4)
7 deficient medication management practices.⁴⁰²

8 402. Overall, the DRC report found that “Adelanto’s mental health care
9 system does not meet the needs of the detainee population, and facility conditions
10 are counter-therapeutic, all of which places people with mental health disabilities at
11 a significant risk of harm. We found that the conditions and practices at Adelanto
12 result in the abuse and neglect of detainees with mental health disabilities as
13 defined in federal law.”⁴⁰³

14 403. Defendants’ own reports and DDRs also substantiate these problems.

15 404. On March 28, 2017, Osmar Epifanio Gonzalez-Gadba died by suicide
16 after a three-month detention at Adelanto.⁴⁰⁴ He was evaluated by a doctor on
17 March 20 and 22, but the doctor was unaware that Mr. Gonzalez-Gadba had been
18 refusing psychiatric medications.⁴⁰⁵ Mr. Gonzalez-Gadba killed himself on March
19 22. The DDR found that Mr. Gonzalez-Gadba’s medical record did not contain a
20 consent form for psychotropic medications; that nurses did not use the Spanish
21 version of refusal forms for eight doses of psychotropic medications refused by Mr.
22 Gonzalez-Gadba, and did not document whether Mr. Gonzalez-Gadba was
23 counseled about the risks of refusing medication or whether efforts were made to

24 ⁴⁰¹ *Id.* at 20–21.

25 ⁴⁰² *Id.* at 20.

26 ⁴⁰³ *Id.* at 20 (internal citation omitted).

27 ⁴⁰⁴ Office of Professional Responsibility, *Detainee Death Review – Osmar Epifanio
Gonzalez-Gadba*, <https://www.ice.gov/doclib/foia/reports/ddrGonzalez.pdf>.

28 ⁴⁰⁵ *Id.* at 15.

1 encourage medication compliance; and that nurses did not notify a physician or a
2 mental health provider after Mr. Gonzalez-Gadba's medication refusals.⁴⁰⁶

3 405. On May 15, 2017, Jean Carlos Jimenez-Joseph died by suicide while
4 detained at Stewart.⁴⁰⁷ The Georgia Bureau of Investigation reported that Mr.
5 Jimenez-Joseph had been prescribed medication at a mental health facility before he
6 was detained by ICE, but facility staff did not give him the full dosage.⁴⁰⁸ On the
7 night of his death, Mr. Jimenez was seen jumping rope with his bedsheets and had
8 written "Hallelujah the Grave Cometh" in large dark letters on his cell wall.⁴⁰⁹
9 Despite being identified as a suicide risk, he was never placed on suicide watch, nor
10 was he provided the upward adjustment of his anti-psychotic medication he begged
11 for days before his death.⁴¹⁰

12 406. Jose de Jesus Deniz-Sahagun died by suicide in May 2015 at Eloy.⁴¹¹
13 The DDR documents that, upon his arrival at the facility on May 18, 2015, a nurse
14 became aware that he had attempted suicide the day before and that he was still
15 fearful, but because Mr. Deniz-Sahagun did not express suicidal ideation to the
16 nurse, he was referred for a routine, rather than urgent, mental health evaluation.⁴¹²

17 407. On May 19, a doctor diagnosed Mr. Deniz-Sahagun with delusional
18 disorder and placed him on suicide watch until May 26.⁴¹³ The doctor also ordered
19 anti-psychotic and anti-anxiety medications; medical staff later decided not to
20 administer these medications, but this decision was not documented, and the doctor

21 _____
22 ⁴⁰⁶ *Id.* at 19–20, 22.

23 ⁴⁰⁷ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
Center & Detention Watch Network, *supra* note 153161.

24 ⁴⁰⁸ *Id.* at 40.

25 ⁴⁰⁹ *Id.* at 53 (internal citation omitted).

26 ⁴¹⁰ *Id.* at 53.

27 ⁴¹¹ Office of Professional Responsibility, *Detainee Death Review – Jose De Jesus*
Deniz-Sahagun, <https://www.ice.gov/doclib/foia/reports/ddr-denizshagun.pdf>.

28 ⁴¹² *Id.* at 2–4.

⁴¹³ *Id.* at 88.

1 was not notified.⁴¹⁴ On May 20, a doctor removed Mr. Deniz-Sahagun from suicide
 2 watch early because he believed that Mr. Deniz-Sahagun was no longer a danger to
 3 himself.⁴¹⁵ Less than 12 hours later, Mr. Deniz-Sahagun was found unresponsive in
 4 his cell due to suicide.⁴¹⁶

5 408. Overall, the DDR found that the mental health care and treatment
 6 provided to Mr. Deniz-Sahagun was deficient for a number of reasons, including
 7 the facts that the decision not to administer ordered medication to Mr. Deniz-
 8 Sahagun was not documented, his doctor was not notified, and the doctor did not
 9 perform a suicide risk assessment addressing all required factors before removing
 10 Mr. Deniz from suicide watch.⁴¹⁷ In addition, the facility had not developed a
 11 suicide prevention plan, even though this was the third suicide at Eloy since April
 12 2013, and the fifth since 2005.⁴¹⁸ The DDR noted that the facility did not have any
 13 on-call mental health providers.⁴¹⁹

14 409. Two experts reviewed this case on behalf of HRW. One expert noted
 15 that Mr. Deniz-Sahagun should have been thoroughly evaluated by a psychiatrist
 16 and strongly considered for hospitalization.⁴²⁰ In addition, the experts had serious
 17 concerns about the appropriateness of the doctor's decision to downgrade Mr.
 18 Deniz from suicide watch.⁴²¹

19 410. On October 23, 2013, Tiombe Kimana Carlos died while detained at
 20 the York County Prison in Pennsylvania. Ms. Carlos was diagnosed with
 21
 22

23 ⁴¹⁴ *Id.* at 14, 15.

24 ⁴¹⁵ *Id.* at 17.

25 ⁴¹⁶ *Id.* at 20, 24–25.

26 ⁴¹⁷ *Id.* at 27, 28, 32.

27 ⁴¹⁸ *Id.* at 30.

28 ⁴¹⁹ *Id.* at 29.

⁴²⁰ Human Rights Watch & CIVIC, *supra* note 181, at 44.

⁴²¹ *Id.*

1 schizophrenia that, before her death, manifested in suicide attempts, behavioral
2 issues and mental health concerns, and extended stays in segregation.⁴²²

3 411. The DDR found that Ms. Carlos's record lacked "documentation of a
4 treatment plan with measurable goals and objectives . . . to guide mental health
5 interventions over the period of detention."⁴²³ The DDR also noted that, because
6 Ms. Carlos was a mental health chronic care patient for the duration of her
7 detention, and because she attempted suicide in August 2013, "a psychiatric alert
8 was appropriate for her, but none was generated."⁴²⁴

9 412. Two independent experts for HRW reviewed her case and found that
10 subpar mental health care likely contributed to Ms. Carlos' death.⁴²⁵ One expert
11 concluded that the mental health evaluation and treatment she received was
12 "woefully inadequate."⁴²⁶

13 413. These examples illustrate Defendants' systemic failure to ensure that
14 adequate mental health care is provided to people in their network of Detention
15 Facilities. Defendants with deliberate indifference have failed to properly monitor
16 and oversee this sad excuse of a system, leaving detained people experiencing
17 mental health issues exposed to substantial risk of harm, including death.

18 **H. Defendants Systemically Fail to Ensure the Adequacy of Medical**
19 **Records and Documentation.**

20 414. Defendants have a policy and practice of failing to monitor and ensure
21 that Detention Facilities adequately maintain medical records.

22 415. Detention Facilities commonly fail to properly document information
23 gleaned in medical visits by detained individuals, sometimes failing to document
24

25 ⁴²² Office of Professional Responsibility, *Detainee Death Review – Tiombe Kimana*
26 *Carlos*, ice.gov/doclib/foia/reports/ddr-carlos.pdf.

26 ⁴²³ *Id.* 27.

27 ⁴²⁴ *Id.* at 28.

28 ⁴²⁵ Human Rights Watch & CIVIC, *supra* note 181, at 34.

⁴²⁶ *Id.*

1 that visits happened at all. Further, when detained individuals are transferred
2 between Detention Facilities, their medical records and medications often do not
3 travel with them, preventing timely continuity of care.

4 416. Detained individuals experience harm and unnecessary pain and
5 suffering from interruptions of care resulting from inadequate medical
6 recordkeeping. Examples of the harm include suicide by individuals whose anti-
7 psychotic medications were not administered after transfer, as well as delayed
8 diagnosis of serious conditions like cancer.

9 417. Defendants are deliberately indifferent to the risk of harm and injury to
10 detained individuals that results from this systemic failure. Inadequate medical
11 records have been cited repeatedly, including without limitation in government
12 reports, DDRs, and nonprofit reports. Despite these reports, Defendants have failed
13 to effectively eliminate or mitigate inadequacies in the maintenance of medical
14 records, exposing Plaintiffs and members of the Class to significant risk of serious
15 medical harm.

16 418. The inadequate maintenance of medical records is ubiquitous in
17 Detention Facilities across the country.

18 419. Plaintiff Alex Hernandez was incarcerated prior to his transfer to ICE
19 custody. Upon information and belief, ICE did not request his medical records,
20 which delayed his ability to receive appropriate treatment for his torn rotator cuff,
21 PTSD, and his hip, leg, and foot pain. Each time Mr. Hernandez was transferred
22 from one ICE facility to another, his medical records were not transferred with him,
23 which delayed his access to treatment and disrupted his care. For instance, upon his
24 transfer from Otay Mesa to Etowah, his medication for PTSD was discontinued
25 without reason and he had to restart the process to request treatment for his PTSD;
26 it took several months before his medication was resumed.

27 420. Mr. Hernandez had an eye exam on June 2, 2019, that was
28 administered by a nurse. His medical records, however, contain no documentation

1 of a complete eye exam or the actual results of the vision test. He was told the
2 vision exam did not meet ICE requirements for him to see an optometrist, but there
3 is no way for medical staff or a doctor to review the exam because it is not in his
4 records. Given Mr. Hernandez's other medical conditions, his blurry vision could
5 indicate other serious medical issues, but he has not been evaluated by a doctor.
6 Because of the lack of documentation, there is no recorded reason why Mr.
7 Hernandez's vision exam did not meet ICE requirements to see an optometrist. He
8 was given a diagnosis of anti-social personality disorder, but there is no mention of
9 his previous PTSD diagnosis, and his medical records lack the basis for the
10 diagnosis of a personality disorder.

11 421. Very few of Plaintiff Marco Montoya Amaya's records were
12 transferred with him when he transferred, while in ICE custody, from the Yuba
13 County Jail to the Mesa Verde ICE Processing Center. For example, on information
14 and belief, most of Mr. Montoya Amaya's extensive mental health records from
15 Yuba County Jail were not sent to Mesa Verde, and that fact contributed to the over
16 two-month lapse in treatment for his mental health conditions once he arrived in
17 Mesa Verde.

18 422. Similarly, when Plaintiff Salazar Artaga was transferred to Florence
19 from the Maricopa County Jail, it does not appear that Florence request his medical
20 records. Because of that, the initial Florence screening did not detect any symptoms
21 of psychosis. Mr. Salazar Artaga noted in subsequent sick calls that he had been
22 previously diagnosed with schizophrenia in jail. Although the medical records
23 indicate that Florence staff planned to seek his jail medical records from the
24 Maricopa County Jail to confirm the diagnosis, it is unclear whether they ever
25 asked for or received these records.

26 423. These deficiencies are known by Defendants, but Defendants have not
27 rectified them, leaving Plaintiffs and the Class at substantial risk of serious harm.
28

1 424. For example, DDRs document inadequate maintenance of medical
2 records at a number of facilities, including Adelanto, Albany, Dodge, El Paso, Hall,
3 Houston, Hudson, Joe Corley, Otay Mesa, Otero, Rolling Plains, Theo Lacy, and
4 Utah. Experts concluded that these inadequate medical records contributed to a
5 substantial number of the deaths reviewed.

6 425. These DDRs demonstrate that many Detention Facilities fail to request
7 or receive records from other facilities that the detained individual may have cycled
8 through, including hospitals, off-site medical providers, and other Detention
9 Facilities, resulting in a lack of communication among medical providers.

10 426. Jose de Jesus Deniz-Sahagun died by suicide on May 20, 2015, at
11 Eloy.⁴²⁷ Even though Mr. Deniz-Sahagun was prescribed anti-psychotic and anti-
12 anxiety medications, medical staff opted not to administer these medications
13 without documenting their decision or contacting the physician.⁴²⁸ The DDR
14 concluded that several actions by staff were deficient, including this failure of
15 documentation.⁴²⁹

16 427. Similarly, Petra Albrecht, who had, among other conditions, fluid on
17 her heart and a gastrointestinal perforation, was transferred to Adelanto from Otay
18 Mesa, where she had an appointment to see a specialist.⁴³⁰ The Adelanto staff told
19 her that because she had moved to a new facility, they would “start over” with tests
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21
22

23 ⁴²⁷ Office of Professional Responsibility, *Detainee Death Review – Jose de Jesus*
24 *Deniz-Sahagun*, <https://www.ice.gov/doclib/foia/reports/ddr-denizshagun.pdf>.

24 ⁴²⁸ *Id.* at 15.

25 ⁴²⁹ *Id.* at 27.

26 ⁴³⁰ CIVIC & Detention Watch Network, *Abuse in Adelanto: An Investigation Into a*
27 *California Town’s Immigration Jail*, at 15 (Oct. 2015),
28 http://www.endisolation.org/wp-content/uploads/2015/11/CIVIC_DWN-Adelanto-Report_old.pdf.

1 and medical care.⁴³¹ Albrecht later became unconscious during a presumed heart
2 attack.⁴³²

3 428. Similarly, the 2017 HRW report documents significant gaps in
4 detained individuals' health care records while in detention, including with one
5 individual detained at Etowah, diagnosed with stomach cancer after over a year of
6 medical complaints and spotty medical record-keeping.⁴³³ One medical expert
7 found opined the missing records might show a failure to timely address the
8 problems, leading to a delay of diagnosis for a likely fatal condition.⁴³⁴

9 429. These examples illustrate Defendants' systemic failure to ensure that
10 adequate medical records are kept as to people in their network of Detention
11 Facilities. Defendants are aware that their network of Detention Facilities fails to
12 adequately maintain medical records but have not corrected this issue through
13 monitoring and oversight, resulting in detained individuals suffering substantial
14 harm and even death.

15 **VII. As a Result of Defendants' Failure to Monitor and Oversee Segregation**
16 **Practices at Detention Facilities, Conditions in Those Facilities**
17 **Constitute Punishment and Subject Plaintiffs in Segregation and**
18 **Members of the Segregation Subclass to Violations of the Fifth**
Amendment.

19 430. Plaintiffs Alex Hernandez, Jimmy Sudney, Hamida Ali, and Marco
20 Montoya Amaya (collectively the "Segregation Plaintiffs") and the Segregation
21 Subclass challenge ICE's systemic failure to ensure that Detention Facilities do not
22 improperly subject the Subclass to segregation in violation of the Fifth Amendment.

23 431. As with medical and mental health care, Defendants have sole
24 authority to select and contract with the facilities in which Segregation Subclass
25 members are detained. Defendants maintain centralized control of the standards,

26 ⁴³¹ *Id.*

27 ⁴³² *Id.*

28 ⁴³³ Human Rights Watch & CIVIC, *supra* note 181, at 56, 67, 77.

⁴³⁴ *Id.* at 77.

1 policies, practices, and procedures applicable to segregation. Defendants likewise
2 have ultimate authority—and the legal obligation—to monitor those facilities and to
3 ensure that policies and practices concerning segregation satisfy constitutional
4 dictates. Yet, as detailed below, Defendants have systemically abdicated their duty
5 to ensure that segregation practices throughout the nationwide detention system
6 comply with the minimal requirements of substantive and procedural due process
7 under the Fifth Amendment. Indeed, despite numerous internal and external reports
8 alerting Defendants to systemic failures in ICE’s segregation system, Defendants
9 have refused to take any effective steps to remediate the improper use of
10 segregation throughout the country’s Detention Facilities. Accordingly, absent
11 intervention by this Court, individuals in the Segregation Subclass will continue to
12 be subjected to punitive conditions of confinement and face an ongoing and
13 substantial risk of serious harm.

14 432. Specifically, as a result of ICE’s failure to monitor and oversee
15 segregation in Detention Facilities, detained individuals in segregation are
16 subjected to unconstitutional policies, practices, and omissions, including but not
17 limited to: (1) confinement in conditions that are punitive, (2) exposure to a
18 substantial risk of serious harm, and (3) inadequate procedural protections
19 (collectively, the “Segregation Practices”). Both alone and in their totality, these
20 conditions violate the Segregation Subclass’s Fifth Amendment rights.

21 433. Organizational Plaintiffs ICIJ and Al Otro Lado have had to divert
22 resources, and have had their missions frustrated, as a result of the Segregation
23 Practices.

24 434. Plaintiffs Alex Hernandez, Jimmy Sudney, Hamida Ali, and Marco
25 Montoya Amaya have all been harmed and subjected to, and face the ongoing
26 possibility of being harmed and subjected to, constitutionally deficient segregation
27 as a result of Defendants’ failure to properly monitor and oversee Segregation
28 Practices at Detention Facilities.

A. Defendants Violate the Fifth Amendment by Failing to Ensure That Civil Detainees in Segregation Are Not Subjected to Punitive Conditions of Confinement.

435. Under the Fifth Amendment, segregation conditions in civil Detention Facilities may not rise to the level of punishment.

436. As set forth in detail below, Defendants fail to adequately monitor and oversee segregation practices in Detention Facilities.

437. As a result, detained individuals are subjected to the Segregation Practices, which individually and collectively constitute punishment because they are expressly intended to punish, are not reasonably related to a legitimate governmental objective, and/or are excessive in relation to that objective.

438. In addition, segregation conditions in civil Detention Facilities cannot be the same as or worse than those in a prison. As the Ninth Circuit explained, “purgatory cannot be worse than hell.”⁴³⁵

439. Nevertheless, Defendants maintain a policy and practice of failing to ensure that detained immigrants in segregation are not subjected to punitive conditions. As a result, conditions in segregation throughout Detention Facilities are indistinguishable from—and in some cases worse than—those in prison. Indeed, detained individuals confined in segregation “are typically locked down for at least 22 hours a day, with limited access to recreation or contact with other human beings. Depending on the restrictions, individuals in solitary can be limited or outright denied access to phone calls, visitation, books or personal items, such as photographs of loved ones.”⁴³⁶

⁴³⁵ *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004).

⁴³⁶ Hannah Rappleye, *Thousands of immigrants suffer in solitary confinement in U.S. detention centers*, NBC News (May 20, 2019), <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

1 440. ICE’s Directive 11065.1, “Review of the Use of Segregation for ICE
2 Detainees” (the “Segregation Directive”), characterizes disciplinary segregation as
3 punitive and administrative detention as nonpunitive.⁴³⁷

4 441. Yet ICE’s characterization draws a distinction without a difference.
5 Throughout the Detention Facilities, the conditions in both disciplinary segregation
6 and administrative detention are punitive in nature, and those punitive conditions
7 are materially the same throughout the Detention Facilities. Indeed, regardless of
8 the underlying basis for isolation, individuals subjected to both forms of
9 segregation are subjected to near constant isolation—for 22 or 23 hours per day—in
10 a closed cell; overwhelmingly denied outdoor recreation; restricted from
11 communicating with counsel, their families, and friends; frequently shackled when
12 they are outside their cell, regardless of disciplinary infractions; and denied access
13 to programming, telephones, commissary, personal effects, and law libraries,
14 among other restrictions.

15 442. The similarly punitive conditions in all forms of ICE segregation are
16 well-documented. For example, Penn State Law’s 2017 report found that at Stewart
17 and Irwin, “Detained immigrants report no difference between administrative or
18 disciplinary segregation; both are considered to be equally severe,” and both subject
19 individuals to the same draconian deprivations of liberty.⁴³⁸

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24 ⁴³⁷ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use*
25 *of Segregation for ICE Detainees*, at ¶ 3.1-3.2 (Sep. 4, 2013),
26 https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

27 ⁴³⁸ Penn State Law, *Imprisoned Justice: Inside Two Georgia Immigrant Detention*
28 *Centers*, at 36 (May 2017) [https://projectsouth.org/wp-](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf)
[content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

1 443. Human Rights First’s 2019 report found that staff at three New Jersey
2 facilities confined individuals to their cells for at least 23 hours per day for
3 disciplinary segregation, as compared to 22 hours in administrative segregation.⁴³⁹

4 444. Likewise, a 2019 report on conditions at Adelanto concluded that
5 “[d]etainees are subject to prison-like solitary confinement, whether for disciplinary
6 or administrative reasons.”⁴⁴⁰

7 445. In fact, those confined to administrative segregation do not receive
8 greater protections from prolonged isolated confinement. For example, a 2017 DHS
9 OIG report “identified detainees who were held in administrative segregation for
10 extended periods of time without documented, periodic reviews that are required to
11 justify continued segregation.”⁴⁴¹

12 446. For example, Plaintiff Alex Hernandez was placed in segregation for
13 over two weeks while he was detained at Mesa Verde for safety reasons. While he
14 was in isolation, he was not allowed out of his cell for any recreation. He did not
15 receive an opportunity to visit the law library or use the telephone to contact his
16 family or attorney. He was allowed out of his cell only to shower three times a
17 week. This isolation exacerbated Mr. Hernandez’s PTSD; he experienced
18 nightmares and was paranoid and hypervigilant while in isolation. He did not see a
19 mental health professional while in segregation.

20 447. Plaintiff Hamida Ali was placed in effective segregation for
21 approximately nine months when security staff at Aurora placed her alone in a
22 dorm designed for dozens of women. Ms. Ali has a documented history of
23 schizophrenia and suicidal ideation and attempts, all of which were exacerbated by
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25 ⁴³⁹ Human Rights First, *Ailing Justice: New Jersey Inadequate Healthcare,*
26 *Indifference, and Indefinite Confinement in Immigration Detention*, at 5 (Feb.
27 2018), <https://www.humanrightsfirst.org/sites/default/files/Ailing-Justice-NJ.pdf>.

28 ⁴⁴⁰ Disability Rights Cal., *supra* note 36, at 18.

⁴⁴¹ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-32*, *supra* note 152, at 6.

1 this placement. No steps were taken to ensure that this placement was appropriate
2 for someone with her mental health disability, and both mental health staff and ICE
3 officers informed Ms. Ali that there was nothing they could do about it, even after
4 she had attempted suicide.

5 448. Defendants' abdication of any meaningful oversight of segregation
6 practices has allowed the operators of Detention Facilities to act with impunity in
7 imposing segregation. For example, the June 2019, DHS OIG report found that at
8 Adelanto and Essex, "detainees are placed in disciplinary segregation before the
9 disciplinary hearing panel finds the detainee guilty of the charged offense," and that
10 the facilities erroneously recorded those placements as administrative segregation
11 placements.⁴⁴²

12 449. In a 2019 report detailing unannounced inspections at four detention
13 facilities, OIG raised concerns about overly restrictive segregation practices.⁴⁴³ At
14 Adelanto, Essex, and Aurora, individuals in disciplinary segregation were placed in
15 restraints when they were outside of their cells, despite ICE standards stating that
16 disciplinary segregation alone does not constitute a valid basis for the use of
17 restraints.⁴⁴⁴ At Essex, segregated individuals were strip-searched without
18 documented justification and without reasonable suspicion.⁴⁴⁵ Both Adelanto and
19 Essex failed to give segregated individuals proper recreation or out-of-cell time,
20 and individuals in disciplinary segregation at Adelanto were not permitted to
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24 ⁴⁴² Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG 19-47*, *supra* note
25 97, at 5–6; Performance-Based National Detention Standards: Special Management
Units, Section 2.12.II (U.S. Immigr. & Customs Enf't 2011) (Revised Dec. 2016).

26 ⁴⁴³ Office of Inspector Gen., U.S. Dep't of Homeland Sec., *OIG 19-47*, *supra* note
97, at 3.

27 ⁴⁴⁴ *Id.* at 5.

28 ⁴⁴⁵ *Id.* at 5–6.

1 shower.⁴⁴⁶ Overall, OIG concluded that these practices “violated standards and
2 infringed on detainee rights.”⁴⁴⁷

3 450. DRC’s 2019 Adelanto report found that female disciplinary
4 segregation cells are located in the same physical unit as the administrative
5 segregation cells, and that Adelanto staff placed one detained individual who had
6 been sent from suicide watch to disciplinary segregation because administrative
7 segregation was full.⁴⁴⁸

8 451. Defendants are on notice of, but have failed to address, the use of
9 punitive conditions in segregation.

10 452. Far from anomalous, such punitive conditions in both forms of
11 segregation exist throughout the Detention Facilities. For example, a Penn State
12 Law School study of Stewart and Irwin⁴⁴⁹ found that detained immigrants in
13 segregation at Stewart “cannot tell if it is day or night. There is no access to
14 commissary or showers, and limited or prohibited access to phones, medical
15 attention, and recreation.”⁴⁵⁰ At Irwin, individuals in the “segregated unit spend
16 twenty-three hours in their cells, with limited recreation, shower, and phone access,
17 and no access to the law library or commissary.”⁴⁵¹ As at Essex, staff at Stewart
18 shackle detained individuals in segregation whenever they leave their cells and
19 allow them only one hour a day of non-lockdown time, during which detained
20 individuals must choose between recreation or phone use.⁴⁵²

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22
23 ⁴⁴⁶ *Id.* at 6.

24 ⁴⁴⁷ *Id.* at 3.

25 ⁴⁴⁸ Disability Rights Cal., *supra* note 36, at 30.

26 ⁴⁴⁹ Penn State Law, *Imprisoned Justice: Inside Two Georgia Immigrant Detention*
27 *Centers*, at 36 (May 2017) [https://projectsouth.org/wp-](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf)
28 [content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

⁴⁵⁰ *Id.* at 36.

⁴⁵¹ *Id.* at 49.

⁴⁵² *Id.* at 36–37.

1 453. Similarly, OIG’s 2017 unannounced inspection report of Theo Lacy in
2 California documented several violations of ICE detention standards for
3 disciplinary segregation, including that:

4 [D]isciplinary segregation at [Theo Lacy] means a person is isolated for 24
5 hours a day in a cell with no access to visitors, recreation, or group religious
6 services. The detainees are released briefly every other day to shower. In
7 contrast, ICE detention standards require that detainees placed in disciplinary
8 segregation receive a minimum of 1 hour of recreation five times per week,
9 opportunities for general visitation, religious guidance, and limited access to
10 telephones and reading material. However, through observation and
11 interviews, we determined that detainees are not allowed any recreation time,
12 visitation, religious guidance, or telephone access. They were permitted to
13 access one book from the library for the duration of their stay in solitary,
14 lasting up to 30 days.⁴⁵³

15 454. The California Department of Justice’s 2019 report on immigration
16 detention in California also found “multiple facilities that fail to follow national
17 standards that require one hour of recreation five days a week for detainees in
18 disciplinary segregation.”⁴⁵⁴

19 455. It is not necessary for ICE to subject detained individuals to such
20 horrors. Indeed, the 2011 Performance Based National Detention Standards
21 (“PBNDS”)—standards developed and approved by ICE—require that facilities
22 provide a host of protections that are not implemented in practice.
23

24 _____
25 ⁴⁵³ Office of Inspector Gen., Office of Homeland Sec., OIG-17-43-MA:
26 Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility
27 in Orange, California (2017),
<https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-mga-030617.pdf>.

28 ⁴⁵⁴ Becerra, *supra* note 19, at 123.

456. Moreover, Defendants can proffer no legitimate rationale for imposing conditions in segregation that so closely mirror the conditions of segregation in prison. Defendants' failure in this regard reflects their systemic overreliance on punitive models to effectuate civil detention. Yet, as explained above, the Fifth Amendment prohibits imposition of such punitive conditions in civil detention.⁴⁵⁵

1. Defendants Subject Plaintiffs to a Substantial Risk of Serious Harm Through Their Failure to Monitor and Prevent Needless and Arbitrary Segregation.

457. Defendants' failure to monitor and oversee segregation practices in Detention Facilities results in a serious risk of substantial harm to members of the Segregation Subclass.

458. Confining a person to a cell alone for 22 or more hours a day has an extremely negative effect on psychological health. Segregation places those with preexisting medical or mental health conditions at elevated risk for exacerbating those conditions and those without conditions at elevated risk for developing them.⁴⁵⁶ Psychological effects of the isolation brought about by segregation include anxiety, depression, insomnia, confusion, withdrawal, emotional flatness, cognitive dysfunction, hallucinations, paranoia, and suicidality.⁴⁵⁷ Approximately fifty percent of all prison suicides happen among the two to eight percent of incarcerated individuals held in solitary confinement.⁴⁵⁸ According to a 2014 report, detained

⁴⁵⁵ *Jones*, 393 F.3d at 933.

⁴⁵⁶ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 333–38 (2006), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy.

⁴⁵⁷ Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 Crime & Delinq. 124, 130–31, 133–34 (2003), <https://www.gwern.net/docs/psychology/2003-haney.pdf>.

⁴⁵⁸ Stuart Grassian & Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, 13 Corr. Mental Health Report 1, 11 (2011), <https://www.probono.net/prisoners/stopsol->

1 individuals held in segregation in New York City jails were nearly seven times
2 more likely to harm themselves than were those in the general population.⁴⁵⁹

3 459. ICE has been on notice for years of the deleterious health effects of
4 segregation.

5 460. For example, the 2011 OIG Mental Health Management Report recited
6 mental health care providers at Detention Facilities as stating that: “[s]egregation is
7 never an appropriate setting for long-term placement of mentally ill detainees”;
8 “[s]egregation often exacerbates mental illness and is counterproductive to the goal
9 of stabilizing a detainee”; “[s]egregation is not a good environment for those with
10 mental health concerns because detainees reported increased levels of depression
11 and anxiety when held in a short stay unit”; “[i]t is not possible to make segregation
12 into a therapeutic setting in which a mentally ill detainee’s condition would
13 improve”; and “[s]pecial management units should only be used at the detainee’s
14 request, or for short periods when these units are the only option.”⁴⁶⁰

15 461. Nevertheless, Defendants have failed to ensure that Detention
16 Facilities do not improperly use segregation or place detained individuals in
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19 reports/416638.The_Colorado_Study_vs_the_Reality_of_Supermax_Confinement;
20 see also Jennifer R. Wynn & Alisa Szatrowski, *Hidden Prisons: Twenty-Three-*
21 *Hour Lockdown Units in New York State Correctional Facilities*, 24 Pace L. Rev.
22 497, 516 (2004),
23 <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1202&context=plr> (“More than half of prison suicides in New York take place in
24 twenty-three-hour lockdown units, although less than 10 percent of the inmate
25 population is housed in them.”).

26 ⁴⁵⁹ Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail*
27 *Inmates*, 104 Am. J. Pub. Health 442, 444–46 (2014),
28 <https://ajph.aphapublications.org/doi/10.2105/AJPH.2013.301742>.

⁴⁶⁰ Office of Inspector Gen., Dep’t of Homeland Sec., *OIG-11-62: Management of*
Mental Health Cases in Immigration Detention, at 15 (March 2011),
<https://www.hsdl.org/?abstract&did=6985>.

1 segregation in lieu of providing them with proper mental health care or
2 accommodations.

3 462. Indeed, ICE’s own policies authorize the placement in segregation of
4 detained individuals with “special vulnerabilities” when “no other viable housing
5 options exist.”⁴⁶¹ This includes detained individuals “who are known to be suffering
6 from mental illness or serious medical illness; who have a disability or are elderly,
7 pregnant, or nursing; who would be susceptible to harm in general population due
8 in part to their sexual orientation or gender identity; or who have been victims—in
9 or out of ICE custody—of sexual assault, torture, trafficking, or abuse.”⁴⁶²

10 463. Not surprisingly, many detained individuals with mental health
11 disabilities are placed in segregation, rather than provided with appropriate mental
12 health services. For example, according to data from the International Consortium
13 of Investigative Journalists, nearly one-third of segregation placements consisted of
14 detained individuals who were described as being “mentally ill.”⁴⁶³

15 464. The “vulnerable” populations ICE identified in its 2013 Segregation
16 Directive⁴⁶⁴ are subjected to an even higher risk of harm. The Division of
17 Immigration Health Services—the agency responsible for detained individuals’
18 medical care in 2008—estimated that, at that time, 15% of individuals detained by
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20 ⁴⁶¹ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of*
21 *Segregation for ICE Detainees*, at ¶ 2 (Sept. 4, 2013),
22 https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

23 ⁴⁶² U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of*
24 *Segregation for ICE Detainees*, at ¶ 3.3 (Sept. 4, 2013),
25 https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

26 ⁴⁶³ Antonio Cucho & Karrie Kehoe, *Solitary Voices: How US Immigration*
27 *Authorities Use Solitary Confinement* (May 20, 2019),
28 <https://www.icij.org/investigations/solitary-voices/how-us-immigration-authorities-use-solitary-confinement/>.

⁴⁶⁴ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of*
Segregation for ICE Detainees, *supra* note 462, at ¶ 2.

1 ICE had at least one mental health disability.⁴⁶⁵ The New York City study found
 2 that detained individuals with serious mental health disabilities who were confined
 3 to segregation were almost ten times more likely to engage in potentially fatal self-
 4 harm.⁴⁶⁶ One federal court, summarizing the literature in 1995, likened confining
 5 inmates with mental health disabilities in isolation to “the mental equivalent of
 6 putting an asthmatic in a place with little air.”⁴⁶⁷

7 465. Ellen Gallagher, former policy advisor at DHS’s Office for Civil
 8 Rights and Civil Liberties, raised the alarm about abuse of segregation for people in
 9 ICE custody.⁴⁶⁸ Gallagher found that many people who were listed as having a
 10 “serious mental illness” were assigned to extended periods of segregation. ICE’s
 11 widespread use of segregation, particularly with regard to individuals with special
 12 vulnerabilities, such as those with serious mental health disabilities, violated the

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 15 ⁴⁶⁵ Dana Priest & Amy Goldstein, *Suicides Point to Gaps in Treatment*, The
 16 Washington Post, May 13, 2008, [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d3p1.html?noredirect=on)
[srv/nation/specials/immigration/cwc_d3p1.html?noredirect=on](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d3p1.html?noredirect=on).

17 ⁴⁶⁶ Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail*
 18 *Inmates*, 104 Am. J. Pub. Health 442, 445 (2014); *see also* Human Rights Watch,
 19 *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US*
 20 *Jails and Prisons* (May 2015), [https://www.hrw.org/report/2015/05/12/callous-and-](https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and)
[cruel/use-force-against-inmates-mental-disabilities-us-jails-and](https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and) (Finding that
 21 isolation may worsen and intensify pre-existing mental health related symptoms
 22 such as depression, paranoia, psychosis, and anxiety, and can cause severe
 23 impairment in isolated individuals’ ability to function).

24 ⁴⁶⁷ *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).

25 ⁴⁶⁸ Maryam Saleh & Spencer Woodman, *A Homeland Security Whistleblower Goes*
 26 *Public About Ice Abuse of Solitary Confinement*, The Intercept (May 20, 2019)
[https://theintercept.com/2019/05/21/ice-solitary-confinement-](https://theintercept.com/2019/05/21/ice-solitary-confinement-whistleblower/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=baf0e9f0%E2%80%A6)
[whistleblower/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=b](https://theintercept.com/2019/05/21/ice-solitary-confinement-whistleblower/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=baf0e9f0%E2%80%A6)
[af0e9f0%E2%80%A6](https://theintercept.com/2019/05/21/ice-solitary-confinement-whistleblower/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=baf0e9f0%E2%80%A6). *See also* Hannah Rappleye et al., *Thousands of immigrants*
 27 *suffer in solitary confinement in U.S. detention centers*, NBC News (May 20, 2019)
[https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-](https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881)
[solitary-confinement-u-s-detention-centers-n1007881](https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881).

1 agency's policies and procedures. She found that segregation, meant to be used as a
2 last resort in many cases, was often the first and only option in Detention Facilities.

3 466. There have been numerous examples of detained individuals with
4 physical or mental disabilities that have been put at significant risk of substantial
5 harm by being placed in segregation. For example, in 2017, an individual in the
6 Aurora facility was placed in solitary confinement for almost a month due to
7 frequent seizures.⁴⁶⁹ According to the detained individual, "They told me it was to
8 monitor my seizures. I felt like they were treating me like an animal by putting me
9 in a room by myself for weeks. They ignored me and treated me horribly."⁴⁷⁰

10 467. This person's experience echoes the experiences of many of the
11 Plaintiffs in this case, who have likewise been subjected to prolonged segregation,
12 notwithstanding having conditions that make such placement dangerous.

13 468. Plaintiff Jimmy Sudney was placed in segregation for about a week
14 after a verbal altercation with officers who were harassing him. He filed a grievance
15 and was placed in segregation about two days after he submitted his complaint.
16 Though Adelanto medical staff knew that Mr. Sudney had mental health disabilities
17 including PTSD, the mental health assessment conducted prior to his placement in
18 isolation was cursory—he was asked only if he would harm or kill himself. There
19 was no other inquiry into his mental health or other possible symptoms of
20 deterioration and exacerbation of symptoms related to his PTSD. The noise in
21 segregation triggered a PTSD flashback in which he relived the earthquake in Haiti
22 where his house collapsed around him.

23
24 ⁴⁶⁹ Letter from American Immigration Council & American Immigration Lawyers
25 Association to Thomas Homan, Acting Dir., Immigration & Customs Enf't, Dep't
26 of Homeland Sec. et al. (June 4, 2018) at 15,
27 [http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/co
28 mplaint_demands_investigation_into_inadequate_medical_and_mental_health_care
condition_in_immigration_detention_center.pdf.](http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf)

⁴⁷⁰ *Id.*

1 469. For example, Plaintiff Hamida Ali, who has a mental health disability
2 and a history of suicidal ideation and attempts, was effectively placed in
3 segregation when she was housed alone at Aurora for approximately nine months.
4 During one of the brief periods in which Ms. Ali was not alone in the dorm, the
5 other detained woman with her told security staff that they should not leave Ms. Ali
6 alone because she had a mental health disability. Ms. Ali heard security staff say
7 that it was none of their business.

8 470. As a result of her housing placement, Ms. Ali experienced several
9 episodes of extreme psychological distress and suicidal ideation. Despite this, and
10 despite her repeated insistence that her placement in the dorm was the cause, mental
11 health staff took no action, deferring to security staff classification and housing
12 placements. Ms. Ali's repeated requests to her ICE Deportation Officer to move
13 dorms also went unheeded. Ms. Ali was placed on suicide watch in April 2019 after
14 hearing voices, crying uncontrollably, and wrapping a sweater around her neck. She
15 was placed back in the dorm by herself when she was taken off of suicide watch.
16 The conditions exacerbated her mental health difficulties.

17 471. Plaintiff Marco Montoya Amaya has been living with an untreated
18 likely brain parasite for over a year. This brain parasite, left untreated, can cause
19 severe and life-threatening symptoms, including irreversible cognitive and
20 psychiatric symptoms, some of which Mr. Montoya Amaya already appears to be
21 experiencing. Despite this known diagnosis, and despite his other diagnoses for
22 PTSD and major depressive disorder, Mr. Montoya Amaya was placed in
23 segregation for approximately one week in May 2019 for accidentally eating an
24 extra tray he was given by an officer. He did not understand the officer's
25 instructions—likely due to his cognitive impairment—that the tray was for other
26 detained individuals who were fasting for Ramadan. He did not receive any
27 opportunity to appeal or challenge his segregation. Further, Mr. Montoya Amaya
28

1 was confused as to whether the segregation was disciplinary, or instead for his
2 health or protection, as he was housed in medical isolation.

3 472. While in segregation, Mr. Montoya Amaya did not receive daily
4 mental health or physical health evaluations, and it appears he instead had a total of
5 only two mental health evaluations. To the extent he received any health evaluation
6 before he entered segregation, that health evaluation was incomplete and incorrect;
7 for example, despite indicating that the health professional had completed a chart
8 review, a note in his medical record related to his segregation falsely indicated that
9 Mr. Montoya Amaya did not have any headaches or dizziness, despite having those
10 symptoms regularly documented in his medical records for over a year.

11 473. The risk of harm suffered by Plaintiffs and the Class as a result of
12 Defendants' failure to sufficiently monitor and oversee Detention Facilities so as to
13 prevent the Segregation Practices is neither remote nor minimal, but rather
14 substantial and irreparable. Indeed, the tragic—and preventable—deaths of
15 numerous detained individuals subjected to Segregation Practices demonstrate both
16 the gravity and urgency of harm stemming from these practices. For example, in
17 July 2018, Efrain De la Rosa died by suicide at Stewart.⁴⁷¹ Despite having
18 schizophrenia, and despite IHSC's receipt of 12 separate notifications depicting
19 suicidal ideation and psychosis, Mr. De la Rosa was not treated with psychotropic
20 medication; instead, he was remanded to segregation for 23 hours a day for the
21 entire three-week period leading up to his death.⁴⁷² On the day of his death,

22
23 ⁴⁷¹ CoreCivic General Counsel Office of Investigations, *Investigation Report Form: Stewart Detention Center – FSC Case # 2018-2505-087-1: Efrain De La Rosa*
24 (August 6, 2018). *See also* Robin Urevich, *Newly released documents reveal mounting chaos and abuse at a troubled ICE detention center*, Fast Company (Jan.
25 29, 2019), <https://www.fastcompany.com/90298739/newly-released-documents-reveal-mounting-chaos-and-abuse-at-a-troubled-ice-detention-center>.
26

27 ⁴⁷² Ken Klippenstein, *ICE Detainee Deaths Were Preventable: Document*, The
28 Young Turks (June 3, 2019),

1 detention officers repeatedly failed to perform required thirty-minute checks, and
 2 failed to check on Mr. De la Rosa for nearly two hours before finding him
 3 unresponsive in his cell.⁴⁷³ The Georgia Bureau of Investigation's report found a
 4 series of mistakes in Mr. De la Rosa's care, including that he was held in prolonged
 5 segregation despite serious mental health disability.⁴⁷⁴

6 474. Likewise, on October 23, 2013, Tiombe Kimana Carlos died by
 7 suicide while detained at York County in Pennsylvania.⁴⁷⁵ Ms. Carlos was
 8 diagnosed with schizophrenia prior to her arrival at the facility.⁴⁷⁶ Ms. Carlos
 9 showed symptoms of an acute mental health condition from the start of her two-
 10 and-a-half-year detention at York County.⁴⁷⁷ In April 2011, a Licensed Professional
 11 Counselor documented that Ms. Carlos had a mental health history and took Haldol
 12 by injection every two weeks.⁴⁷⁸ Over the next two and a half years, she was placed
 13 on suicide watch five times and attempted suicide once, and held in segregation for
 14 at least nine months over 12 separate instances due to "behavioral issues and
 15 associated mental health concerns."⁴⁷⁹

16 475. After an attempted suicide on August 13, 2013, Ms. Carlos remained
 17 in segregation.⁴⁸⁰ The DDR states that Ms. Carlos' record contains "no
 18

19 _____
 20 <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h>;
 Robin Urevich, *supra* note 471.

21 ⁴⁷³ CoreCivic General Counsel Office of Investigations, *supra* note 471. *See also*
 Robin Urevich, *supra* note 471.

22 ⁴⁷⁴ Robin Urevich, *supra* note 471.

23 ⁴⁷⁵ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
Death Review – Tiombe Kimana Carlos, at 1,
 24 <https://www.ice.gov/doclib/foia/reports/ddr-carlos.pdf>.

25 ⁴⁷⁶ *Id.* at 5.

26 ⁴⁷⁷ *Id.* at 3.

⁴⁷⁸ *Id.*

27 ⁴⁷⁹ *Id.* at 6, 8–9, 10–11, 23.

28 ⁴⁸⁰ *Id.* at 10–12.

1 documentation [facility] mental health staff pursued alternative placement with
2 [ICE Enforcement and Removal Operations].”⁴⁸¹

3 476. Two independent experts reviewed Ms. Carlos’ medical records on
4 behalf of HRW and found that the substantial amount of time Ms. Carlos was held
5 in segregation was “counter to accepted norms for treating mental illness whereby
6 segregation and use of restraints are temporizing measures for use in emergencies
7 and as a last resort-rather than a routine response.”⁴⁸²

8 477. Clemente Ntangola Mponda died in September 2013 by apparent
9 suicide while at the Houston Contract Detention Center in Texas.⁴⁸³ Mr. Mponda
10 was identified as having significant mental health needs early in his detention, when
11 facility medical staff diagnosed him with “depression or schizophrenia.”⁴⁸⁴ For
12 eight months of his 15-month detention at the facility, Mr. Mponda was in
13 segregation, including administrative segregation, disciplinary segregation, and
14 three days on suicide watch.⁴⁸⁵ A doctor interviewed for the DDR “stated he
15 ordinarily does not recommend segregation because it is often a ‘destabilizing
16 environment.””⁴⁸⁶ Mr. Mponda attempted suicide twice.⁴⁸⁷ The DDR found
17 numerous violations of standards for placing someone in segregation and for
18 reviewing whether continued segregation was justified, including failure to
19 medically clear him for segregation and failure to include the input of mental health
20 professionals.⁴⁸⁸

21 ⁴⁸¹ *Id.* at 27.

22 ⁴⁸² Human Rights Watch & CIVIC, *supra* note 181, at 34.

23 ⁴⁸³ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
24 *Death Review – Clemente Ntangola Mponda*,
<https://www.ice.gov/doclib/foia/reports/ddr-mponda.pdf>.

25 ⁴⁸⁴ *Id.* at 4.

26 ⁴⁸⁵ *Id.* at 24.

27 ⁴⁸⁶ *Id.* at 34.

28 ⁴⁸⁷ *Id.* at 5, 6.

⁴⁸⁸ *Id.* at 25–30.

1 478. The second time Mr. Mponda attempted suicide, staff placed him in
 2 segregation upon his return from the hospital and did not create a mental health
 3 treatment or management plan for him.⁴⁸⁹ Two experts reviewing this case on
 4 behalf of HRW identified substandard care.⁴⁹⁰ One expert concluded that this case
 5 “might be the poster child for misuse of isolation for mental health patients.” The
 6 other noted that “standard psychiatric care is to utilize segregation and restraints as
 7 temporizing measures for short-term use and only urgent situations, rather than as a
 8 routine means of addressing psychiatric illness,” and that in Mr. Mponda’s case,
 9 “the repeated overuse of segregation without considering other options may well
 10 have contributed to an unstable individual becoming even more unstable and
 11 ultimately contributed to his death.”⁴⁹¹

12 479. Defendants’ failure to monitor and prevent improper and exaggerated
 13 use of segregation at Detention Facilities also extends to other vulnerable
 14 populations, including pregnant women and the elderly.

15 480. Placing pregnant and nursing women in segregation has a host of
 16 negative health consequences and is prohibited by the United Nations Rules for the
 17 Treatment of Women Prisoners and Non-Custodial Measures for Women
 18 Offenders.⁴⁹² People with physical disabilities are also at heightened risk of harm in

19 ⁴⁸⁹ *Id.* at 6, 31.

20 ⁴⁹⁰ Human Rights Watch & CIVIC, *supra* note 181, at 42.

21 ⁴⁹¹ *Id.*

22 ⁴⁹² *See Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal,*
 23 *and Public Safety Consequences Before the Subcomm. on Constitution, Civil Rights*
 24 *and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement
 25 of the Correctional Association of New York),
 26 [https://archive.org/stream/gov.gpo.fdsys.CHRG-112shrg87630/CHRG-](https://archive.org/stream/gov.gpo.fdsys.CHRG-112shrg87630/CHRG-112shrg87630_djvu.txt)
 27 [112shrg87630_djvu.txt](https://archive.org/stream/gov.gpo.fdsys.CHRG-112shrg87630/CHRG-112shrg87630_djvu.txt) (describing challenges pregnant women in isolation can
 28 face in trying to access medical care) (“[I]solation can compromise women’s ability
 to fulfill their particular needs related to reproductive health care, for instance by
 impeding pregnant women’s access to critical obstetrical services, preventing them
 from getting the regular exercise and movement vital for a healthy pregnancy.”)

1 segregation, as they are “often denied access to the very physical and
2 pharmacological therapies that will help them maintain their health or prevent
3 physical deconditioning.”⁴⁹³

4 481. Segregation of elderly individuals increases the risk that they will
5 develop or exacerbate chronic health conditions, as sensory deprivation from
6 prolonged confinement in an empty room can worsen mental health and lead to
7 memory loss; limited space hinders mobility, which is crucial for maintaining
8 health through exercise; and a lack of sunlight can cause vitamin D deficiencies and
9 greater risk of fractured bones.⁴⁹⁴ Likewise, people with serious and chronic
10 medical conditions may suffer from exacerbations of their symptoms due to the
11 stress, lack of exercise, reduced access to healthcare, and inability of staff to detect
12 and quickly respond to medical emergencies.⁴⁹⁵

13 482. However, despite the well-known harm that segregation wreaks on
14 detained individuals, ICE continues to explicitly allow its contractors to use it
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16 Similarly, women in isolation may be dissuaded from requesting care related to
17 sensitive gynecological issues because they are required to inform correction
18 officers about details of their medical problem, may have serious difficulty
19 accessing appropriate medical staff when they do reach out, may be shackled during
20 gynecological appointments that do occur, and will often interact with medical
21 providers in full view of correction officers and/or receive superficial evaluations
22 through closed cell doors.”).

23 ⁴⁹³ Am. Civil Liberties Union, *Caged In: Solitary Confinement’s Devastating Harm*
24 *on Prisoners with Physical Disabilities*, at 27 (Jan. 2017),
25 [https://www.aclu.org/sites/default/files/field_document/010916-aclu-](https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf)
26 [solitarydisabilityreport-single.pdf](https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf).

27 ⁴⁹⁴ Brie Williams, *Older Prisoners and the Physical Health Effects of Solitary*
28 *Confinement*, 106 Am. J. Pub. Health 2126 (2016),
29 <https://escholarship.org/uc/item/64n248wp>.

30 ⁴⁹⁵ Am. Civil Liberties Union, *Caged In: Solitary Confinement’s Devastating Harm*
31 *on Prisoners with Physical Disabilities*, at 24–32 (Jan. 2017),
32 [https://www.aclu.org/sites/default/files/field_document/010916-aclu-](https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf)
33 [solitarydisabilityreport-single.pdf](https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf).

1 liberally for its general population and as long as “no other viable housing options
2 exist” for those it deems especially vulnerable.⁴⁹⁶

3 483. These risks are not limited to those who currently have special
4 vulnerabilities. Indeed, all individuals are at risk for developing mental health
5 conditions when placed in segregation, especially for prolonged periods. The
6 danger is well-known: “severe and prolonged restriction of environmental
7 stimulation in solitary confinement is toxic to brain functioning.”⁴⁹⁷ The United
8 Nations Special Rapporteur on Torture, citing multiple studies regarding the
9 harmful effects of even short period of isolation, has said that isolation can amount
10 to “torture or cruel, inhuman or degrading treatment,” and that isolation for more
11 than 15 days should be absolutely prohibited.⁴⁹⁸

12 484. Despite this overwhelming evidence, ICE policy allows extended
13 placement in segregation “when necessary, after engaging in an individualized
14 assessment of the case.”⁴⁹⁹ A DHS OIG 2016 report recommended that ICE
15 “[e]stablish time limits for holding mentally ill detainees in segregation outside of
16 medical units, and identify recourses for Detention Facilities when segregated
17
18
19

20 ⁴⁹⁶ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of*
21 *Segregation for ICE Detainees*, at ¶ 2 (Sept. 4, 2013),
https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

22 ⁴⁹⁷ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. &
23 Pol’y 325, 349 (2006),
[https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_j](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy)
24 [ournal_law_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy).

25 ⁴⁹⁸ *Solitary confinement should be banned in most cases, UN expert says*, UN News
26 (October 18, 2011), [https://news.un.org/en/story/2011/10/392012-solitary-](https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says)
[confinement-should-be-banned-most-cases-un-expert-says](https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says).

27 ⁴⁹⁹ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of*
28 *Segregation for ICE Detainees*, at ¶ 7 (Sept. 4, 2013),
https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

1 detainees are approaching set time limits.”⁵⁰⁰ However, on information and belief,
2 ICE did not adopt that recommendation.

3 485. Therefore, although those ICE has identified as having “special
4 vulnerabilities” are at greatest risk of harm as a result of segregation, any detained
5 individual is at risk for being sent to segregation for prolonged periods—and then,
6 in turn, being at a heightened risk for developing mental or physical disabilities.

7 **2. Defendants Fail to Monitor and Oversee Segregation Practices on a**
8 **Systemic Scale.**

9 486. ICE’s 2013 Segregation Directive established centralized policies and
10 procedures governing placement of detained individuals in segregation.⁵⁰¹ These
11 policies ostensibly mandate centralized review of many segregation placements.
12 However, ICE fails to ensure implementation of these policies.⁵⁰²

13 487. Insufficient though the ICE policies are to protect against a serious risk
14 of harm, ICE fails even to follow its own policies. For example, a 2017 DHS OIG
15 report found that ICE Field Offices “did not record and promptly report all
16 instances of segregation to ICE headquarters, nor did their system properly reflect
17 all required reviews of ongoing segregation cases per ICE guidance.”⁵⁰³ Nor does

18 ⁵⁰⁰ Office of Inspector Gen., Office of Homeland Sec., OIG-16-113-VR: *ICE Still*
19 *Struggles to Hire and Retain Staff for Mental Health Cases in Immigration*
20 *Detention*, at 6 (July 21, 2016), <https://www.oig.dhs.gov/assets/VR/FY16/OIG-16-113-VR-Jul16.pdf>.

21 ⁵⁰¹ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of*
22 *Segregation for ICE Detainees*, at ¶ 2 (Sept. 4, 2013),
https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

23 ⁵⁰² Office of Inspector Gen., Office of Homeland Sec., OIG-17-119: *ICE Field*
24 *Offices Need to Improve Compliance with Oversight Requirements for Segregation*
25 *of Detainees with Mental Health Conditions*, (Sept. 29, 2017),
<https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

26 ⁵⁰³ Office of Inspector Gen., Office of Homeland Sec., OIG-17-119: *ICE Field*
27 *Offices Need to Improve Compliance with Oversight Requirements for Segregation*
28 *of Detainees with Mental Health Conditions*, at 1 (Sept. 29, 2017),
<https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

1 ICE “regularly compare segregation data in the electronic management system with
 2 information at Detention Facilities to assess the accuracy and reliability of data in
 3 the system.”⁵⁰⁴ Thirty-nine percent of placements were reported to ICE’s Custody
 4 Management Division after the three days mandated by the Segregation
 5 Directive.⁵⁰⁵ OIG’s file reviews found that 74 percent of reviews were either
 6 missing or incomplete in ICE’s online case management system (“SMRS”).⁵⁰⁶
 7 Because ICE headquarters uses the SRMS to review detained individuals’
 8 placements in segregation, these failures preclude any centralized review of those
 9 placements. The report gives one example of a detained individual who was placed
 10 in disciplinary segregation on four separate occasions, none of which was
 11 documented in the SRMS.⁵⁰⁷

12 488. On information and belief, the “Detention Inspection Form
 13 Worksheet” (the “Inspection Worksheet”) that is used in connection with many
 14 inspections of Detention Facilities includes a section concerning segregation units
 15 that omits or gets wrong several parts of the Segregation Directive. Whereas the
 16 Directive requires that the ICE Field Office Director be notified whenever a
 17 detained individual has been held in segregation continuously for 21 days, or for 14
 18 days out of a 21-day- period,⁵⁰⁸ the Inspection Worksheet requires only that the ICE
 19 Field Office Director be notified when a detained individual’s confinement in
 20 segregation exceeds 30 days. In addition, the Inspection Worksheet omits any
 21 mention of the Directive’s requirement that the Field Office Director be notified
 22 within 72 hours when a detained individual has been placed in administrative
 23

24 ⁵⁰⁴ *Id.*

25 ⁵⁰⁵ *Id.* at 5.

26 ⁵⁰⁶ *Id.* at 6.

27 ⁵⁰⁷ *Id.* at 5.

28 ⁵⁰⁸ U.S. Immigration & Customs Enf’t, *Directive No. 11065.1: Review of the Use of Segregation for ICE Detainees*, at ¶ 5.1(1) (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

1 segregation on the basis of a medical or mental health condition, disability, or other
 2 special vulnerability, as well as any mention of the notification requirement any
 3 time a detained individual with a mental condition, serious mental health disability,
 4 or physical disability is placed in segregation.

5 489. Predictably, ICE's insistence on letting its contractors confine detained
 6 individuals to segregation and lack of interest in monitoring conditions has led to
 7 disastrous results systemwide. Rather than providing a therapeutic environment for
 8 those most at risk for lasting damage from segregation, contractors use segregation
 9 as a panacea for all manner of perceived inconveniences.

10 490. A June 2019 OIG report summarizing unannounced inspections of
 11 Adelanto, Essex, Aurora, and LaSalle found that overly restrictive segregation
 12 practices were used.⁵⁰⁹ For example, detained individuals at Adelanto and Essex are
 13 placed in disciplinary segregation before a disciplinary hearing finds them guilty of
 14 a charged offense. Facility forms also incorrectly state that individuals are in
 15 administrative segregation, when they are actually in disciplinary segregation.⁵¹⁰

16 491. A May 2019 NBC News report found, after reviewing 8,488 cases,
 17 that half of segregation placements were not for disciplinary reasons but instead
 18 "involve the mentally ill, the disabled or others who were sent to solitary largely for
 19 what ICE described as safety reasons."⁵¹¹ In those cases, former CRCL policy
 20 analyst Ellen Gallagher explained that at facilities, "[s]olitary confinement was
 21 being used as the first resort, not the last resort."⁵¹² A third of the segregation
 22 placement reviews involved detained individuals who "were determined by ICE to

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 24 ⁵⁰⁹ Office of Inspector Gen., Office of Homeland Sec., *OIG-19-47*, *supra* note 97.

⁵¹⁰ *Id.* at 5.

25 ⁵¹¹ Hannah Rappleye et al., *Thousands of immigrants suffer in solitary confinement*
 26 *in U.S. detention centers*, NBC News (May 20, 2019)

<https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

27 ⁵¹² *Id.*
 28

1 have a mental illness,” and some were placed in disciplinary segregation “for
 2 offenses that stem from mental illness, such as acts of self-harm.”⁵¹³ Some records
 3 show individuals with mental health disabilities confined to segregation shuttle
 4 “chronically back and forth from the general population to administrative or
 5 disciplinary segregation, with periodic, crisis-oriented admissions to psychiatric
 6 hospitals punctuating their return to the same disturbing cycle.”⁵¹⁴ Records showed
 7 that more than 60 detained individuals were confined in segregation “solely because
 8 they required a wheelchair or some other aid.”⁵¹⁵ Though ICE’s Segregation
 9 Directive requires it to document what alternatives to segregation were considered,
 10 Ms. Gallagher “often found no evidence that ICE had done so.”⁵¹⁶

11 492. Ms. Gallagher raised these concerns for five years, and circulated
 12 memos about them within DHS and then to the US Office of Special Counsel, but
 13 neither OIG nor CRCL has published any reports addressing the systemic use of
 14 either prolonged segregation or segregation of those with special vulnerabilities.⁵¹⁷
 15 Nor have the abuses abated.

16 493. Disability Rights California’s March 2019 report found that facility
 17 staff at Adelanto held detained individuals in segregation on the basis of
 18 disability.⁵¹⁸ Unit rosters identify “mental illness or medical condition” as the
 19 reason for many placements.⁵¹⁹ In its investigation, DRC found multiple examples
 20 of facility staff knowingly sending detained individuals with mental health
 21 disabilities to segregation, only to have those individuals attempt suicide.⁵²⁰

23 ⁵¹³ *Id.*

24 ⁵¹⁴ *Id.*

25 ⁵¹⁵ *Id.*

26 ⁵¹⁶ *Id.*

27 ⁵¹⁷ *Id.*

28 ⁵¹⁸ Disability Rights Cal., *supra* note 36, at 29.

⁵¹⁹ *Id.* at 48.

⁵²⁰ *Id.* at 8, 27, 32.

1 494. A 2017 investigation by The Verge of over 300 segregation logs at
 2 Stewart, Eloy, and Pearsall also found many examples of abuse, including one on
 3 June 8, 2016, when facility staff placed a detained individual in segregation for
 4 “standing up on his open bay bed and urinating in a cup followed by [the detainee]
 5 drinking the same urine.”⁵²¹ Staff, with ICE’s approval, placed this detained
 6 individual in solitary confinement for nearly a month, not for mental health
 7 treatment, but to discipline him for drinking his urine.⁵²² Detained individuals at
 8 Irwin also report staff regularly using prolonged periods of isolation, strapping
 9 those with mental health conditions in straitjackets, and involuntarily confining
 10 those with mental health conditions to segregation.⁵²³ ICE itself has acknowledged
 11 that “[d]ue to housing limitations at various facilities, segregation use for suicide
 12 observation is a necessity.”⁵²⁴

13 495. ICE’s own death reviews also demonstrate the complete lack of
 14 accountability in its segregation system. Inspectors found failures to monitor
 15 individuals in segregation in a number of the publicly available DDRs.

16 496. Before his death on December 2, 2017, Kamyar Samimi spent the
 17 entirety of his 16-day detention at Aurora in medical observation and suicide
 18

19 _____
 20 ⁵²¹ Spencer Woodman, *ICE Detainees are Asking to Be Put in Solitary Confinement*
 21 *for Their Own Safety*, The Verge (2017),
 22 [https://www.theverge.com/2017/3/10/14873244/ice-immigrant-detention-solitary-](https://www.theverge.com/2017/3/10/14873244/ice-immigrant-detention-solitary-trump-corecivic-geo)
[trump-corecivic-geo](https://www.theverge.com/2017/3/10/14873244/ice-immigrant-detention-solitary-trump-corecivic-geo).

23 ⁵²² Id.

24 ⁵²³ Ctr. for Immigrants’ Rights Clinic, PennState Law, *Imprisoned Justice: Inside*
 25 *Two Georgia Immigrant Detention Centers*, at 49 (May 2017),
[https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf)
[1.pdf](https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf).

26 ⁵²⁴ Spencer Woodman, et al., *Thousands of Immigrants Suffer in US Solitary*
 27 *Confinement*, International Consortium of Investigative Journalists (May 21, 2019),
[https://www.icij.org/investigations/solitary-voices/thousands-of-immigrants-suffer-](https://www.icij.org/investigations/solitary-voices/thousands-of-immigrants-suffer-in-us-solitary-confinement/)
[in-us-solitary-confinement/](https://www.icij.org/investigations/solitary-voices/thousands-of-immigrants-suffer-in-us-solitary-confinement/).

1 watch.⁵²⁵ The DDR found that nursing staff failed to conduct a welfare check
 2 during the 14 hours he spent on suicide watch.⁵²⁶ Additionally, the facility doctor
 3 did not renew his orders for Mr. Samimi's placement in medical housing, as
 4 required by GEO policy.⁵²⁷

5 497. On March 28, 2017, Osmar Epifanio Gonzalez-Gadba died by suicide
 6 while detained at Adelanto.⁵²⁸ Though facility staff sent Gonzalez-Gadba to an
 7 outside doctor for mental health treatment, staff placed Mr. Gonzalez-Gadba in
 8 segregation upon his return to Adelanto.⁵²⁹ Because staff knew of Mr. Gonzalez-
 9 Gadba's diagnosed mental health conditions and repeated medication refusals, they
 10 placed him on psychiatric observation status.⁵³⁰ However, staff failed to
 11 consistently check on him every 30 minutes as required, including during the period
 12 that he hanged himself.⁵³¹

13 498. Two independent experts who reviewed Mr. Gonzalez-Gadba's DDR
 14 found that facility staff were on notice that he had serious mental health conditions
 15 and had stopped taking his medicine, and that he should not have been placed in
 16 segregation because of the likelihood of inadequate coping mechanisms due to
 17 stress, resulting in personality disturbance or disintegration.⁵³²

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 21 ⁵²⁵ Samimi DDR, *supra* note 220, at 60–62.

22 ⁵²⁶ *Id.* at 66.

23 ⁵²⁷ *Id.*

24 ⁵²⁸ Office of Professional Responsibility, Office of Detention Oversight, *Detainee*
Death Review – Osmar Epifanio Gonzalez-Gadba, at 1
<https://www.ice.gov/doclib/foia/reports/ddrGonzalez.pdf>.

25 ⁵²⁹ *Id.* at 11.

26 ⁵³⁰ *Id.*

27 ⁵³¹ *Id.* at 11–15.

28 ⁵³² Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice
 Center & Detention Watch Network, *supra* note 155, at 53.

499. On May 15, 2017, Jean Carlos Alfonso Jimenez-Joseph died by suicide while in solitary confinement at Stewart.⁵³³ The Georgia Bureau of Investigation reviewed his death and found that Mr. Jimenez-Joseph had been prescribed medication at a mental health facility before he was detained by ICE, but Stewart staff did not give him the full dosage.⁵³⁴ Despite knowledge that Mr. Jimenez-Joseph was diagnosed with schizophrenia, staff placed him in segregation as punishment for attempting suicide by jumping from the top tier of his housing unit.⁵³⁵ On the night of his death, Mr. Jimenez was seen jumping rope with his bedsheets and had written “Hallelujah the Grave Cometh” in large dark letters on his cell wall. After 19 days in isolation, he died by suicide.⁵³⁶

500. Despite being identified as a suicide risk, he was never placed on suicide watch, nor was he provided the upward adjustment of his anti-psychotic medication he begged for in the days before his death.⁵³⁷ He was also placed in a cell that contained a known suicide hazard, a ceiling sprinkler head, upon which he affixed his makeshift noose.⁵³⁸

501. In sum, evidence from facilities across the country makes clear that segregation is overused, misused, and not properly tracked or reported, leaving detained individuals who may be subjected to the practice at substantial risk of harm. Despite extensive documentation of these problems, ICE has taken no effective steps to prevent these abuses.

⁵³³ *Id.*

⁵³⁴ *Id.* at 40. See also Robin Urevich, *Private prison giant under fire for pressuring Georgia to keep immigrant detainee’s death report sealed*, FAST COMPANY (Dec. 10, 2018) <https://www.fastcompany.com/90279208/private-prison-giant-under-fire-for-pressuring-georgia-to-keep-immigrant-detainees-death-report-sealed>.

⁵³⁵ Human Rights Watch, Am. Civil Liberties Union, National Immigrant Justice Center & Detention Watch Network, *supra* note 155, at 40.

⁵³⁶ *Id.* at 53.

⁵³⁷ *Id.* at 40.

⁵³⁸ *Id.*

VIII. As a Result of Defendants' Failure to Monitor and Oversee Disability-Related Practices in Detention Facilities, Plaintiffs with Disabilities and Members of the Disability Subclass Are Subjected to Violations of the Fifth Amendment and Section 504 of the Rehabilitation Act.

A. Section 504 of the Rehabilitation Act Prohibits Discrimination on the Basis of Disability by Executive Agencies.

502. Plaintiffs Sergio Salazar Artaga, José Baca Hernández, Raul Alcocer Chavez, Jimmy Sudney, Jose Segovia Benitez, Marco Montoya Amaya, Faour Abdallah Fraihat, Ruben Darío Mencías Soto, Aristoteles Sanchez Martinez, Alex Hernandez, Melvin Murillo Hernandez, Luis Manuel Rodriguez Delgadillo, and Hamida Ali (collectively the “Disability Plaintiffs”) and the Disability Subclass challenge ICE’s failure to ensure Detention Facilities comply with the requirements of Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794.

503. Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by executive agencies of the United States. Defendants DHS and ICE are executive agencies, and the Detention Facilities program they operate, whether directly or through contractual, licensing, or other arrangements, constitutes a covered program or activity conducted by executive agencies.

504. Defendants have an affirmative obligation to operate their Detention Facilities program so that it is readily accessible to and usable by individuals with disabilities, does not discriminate on the basis of disability, and is otherwise in compliance with Section 504 and its implementing regulations, 6 C.F.R. § 15.1 *et seq.*

505. Defendants have failed and continue to fail to comply with this affirmative obligation in the following ways (referred to herein as “the Disability Practices”): (1) failing to ensure that their programs are readily accessible to and usable by detained individuals with disabilities; (2) to the extent structural changes or other measures are necessary to make such facilities readily accessible to and

1 usable by detained individuals with disabilities, failing to ensure that such structural
2 changes are made or other measures taken; (3) failing to conduct an adequate self-
3 evaluation or prepare and implement an adequate Transition Plan to bring Detention
4 Facilities into compliance with Section 504; (4) failing to ensure that Detention
5 Facilities maintain and implement adequate screening to identify, track, and
6 accommodate the needs of detained individuals with disabilities; (5) failing to
7 ensure that Detention Facilities do not improperly place persons with disabilities in
8 segregation and administrative segregation in Detention Facilities; (6) failing to
9 ensure that Detention Facilities have an effective system in place to provide
10 detained individuals with disabilities with reasonable accommodations necessary
11 for meaningful access to the benefits available at Detention Facilities, as well as to
12 provide auxiliary aids necessary for detained individuals with sensory impairments
13 to have access to effective communication; (7) making determinations concerning
14 the location of detention facilities that have the purpose or effect of discriminating
15 on the basis of disability; (8) using criteria in the selection of contractors to operate
16 detention facilities that subject members of the Disability Subclass to
17 discrimination on the basis of disability; (9) failing to administer programs and
18 activities in the most integrated setting appropriate to the needs of individuals with
19 disabilities; and (10) using criteria or methods of administration that have the
20 purpose or effect of discriminating on the basis of disability.

21 506. Organizational Plaintiffs ICIJ and Al Otro Lado have had to divert
22 resources, and have had their missions frustrated, as a result of the Disability
23 Practices.

24 507. The policies and practices described herein place members of the
25 Disability Subclass at particular risk of infringement or denial of the rights secured
26 by Section 504.

1 **1. Defendants Exercise Centralized Control Regarding Conditions**
 2 **Impacting Persons with Disabilities at Detention Facilities Nationwide.**

3 508. Defendants have the sole authority to select and contract with the
 4 facilities in which Disability Subclass members are detained. Further, as all
 5 members of the Disability Subclass are in ICE custody, Defendants maintain
 6 centralized control of the standards, policies, practices, and procedures applicable to
 7 detained individuals with disabilities, discussed in detail below. Defendants have in
 8 place centralized directives regarding program accessibility, reasonable
 9 accommodations, and effective communications.

10 509. For example, in 2013, DHS issued Directive 065-01, requiring ICE
 11 and other parts of DHS to, among other things, conduct a self-evaluation, develop a
 12 plan that addresses any barriers identified in the self-evaluation, and document the
 13 policies and procedures for providing reasonable accommodations and
 14 modifications to persons with disabilities.⁵³⁹

15 510. DHS followed up with a 2015 instruction, Instruction #065-01-001,
 16 requiring ICE and other DHS components to designate a lead Disability Access
 17 Coordinator with “the ability and authority to reach across the Component’s
 18 divisions and offices,” and to serve “as the central resource for Component
 19 compliance with Section 504.”⁵⁴⁰

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 23 ⁵³⁹ U.S. Dep’t. of Homeland Sec., *Nondiscrimination for Individuals with*
 24 *Disabilities in DHS-Conducted Programs and Activities (Non-Employment)* (Sep.
 25 2013), [https://www.dhs.gov/sites/default/files/publications/dhs-management-](https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access_0.pdf)
[directive-disability-access_0.pdf](https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access_0.pdf).

26 ⁵⁴⁰ U.S. Dep’t. of Homeland Sec., *Instruction on Nondiscrimination for Individuals*
 27 *with Disabilities in DHS-Conducted Programs and Activities (Non-Employment)*
 28 (March 2015), [https://www.dhs.gov/sites/default/files/publications/dhs-instruction-](https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities_03-07-15.pdf)
[nondiscrimination-individuals-disabilities_03-07-15.pdf](https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities_03-07-15.pdf).

1 511. Defendants also have in place a policy entitled “Assessment and
2 Accommodations for Detainees with Disabilities.”⁵⁴¹ On information and belief,
3 pursuant to this and other policies, detained individuals with communication and
4 mobility disabilities are subjected to reviews by staff at ICE headquarters, in part to
5 make recommendations on accommodations.

6 512. Despite the existence of these system-wide directives and policies,
7 Defendants have failed to take the affirmative steps necessary to enforce them, to
8 otherwise ensure that Detention Facilities have appropriate systems in place to
9 ensure that detained individuals with disabilities have meaningful access to ICE
10 programs and services, and to ensure that detained individuals with disabilities are
11 not denied necessary accommodations or otherwise subject to the discriminatory
12 Disability Practices described below.

13 **2. Defendants Systemically Fail to Ensure Access to ICE Programs and**
14 **Services for Detained Individuals with Disabilities.**

15 513. Defendants have failed to ensure that their Detention Facilities
16 Program is readily accessible to and usable by persons with disabilities (referred to
17 as “Program Access”), including but not limited to failing to engage in alterations
18 to existing facilities, construction of new facilities, redesigning equipment, or
19 reassignment of services to accessible buildings. For example, several Detention
20 Facilities contain architectural barriers and need facilities or program modifications
21 for members of the Disability Subclass to have meaningful access to the benefits of
22 those facilities. Yet Defendants have not adequately evaluated those barriers, much
23 less implemented the changes needed to remedy them.

24 514. Defendants have further failed to conduct an adequate self-evaluation,
25 including opportunities for meaningful input from the disability community in that

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27 ⁵⁴¹ U.S. Immigration & Customs Enforcement, Enforcement and Removal
28 Operations, *Assessment and Accommodations for Detainees with Disabilities* (Dec.
2016).

1 process, despite their own directives and federal regulations requiring such self-
2 evaluation.

3 515. Defendants have also failed to ensure that Detention Facilities make
4 modifications to their policies and practices where needed to avoid discrimination
5 on the basis of disability and denial of access to programs and activities.

6 516. Despite their failure to ensure Program Access, Defendants have
7 nonetheless housed thousands of members of the Disability Subclass in inaccessible
8 facilities. On information and belief, many Detention Facilities lack accessible
9 paths of travel, sufficient accessible restroom and shower facilities, and accessible
10 recreational facilities for detainees with mobility disabilities, among other barriers.
11 Detained individuals with disabilities are denied access to a range of benefits, from
12 access to basic hygiene, recreation and visitation, among others, and face an
13 increased risk of harm, as well as the denial of personal autonomy.

14 517. Examples of architectural barriers and other failures of Program
15 Access at Detention Facilities include a lack of sufficient accessible shower
16 facilities at La Salle, requiring at least one detained individual who uses a
17 wheelchair to rely on the assistance of other detainees to shower; a lack of
18 accessible paths of travel at Stewart, including barriers making it difficult for
19 detained individuals who use wheelchairs to access the medical unit; and
20 overcrowding that blocks accessible paths of travel and provides no access to
21 accessible housing facilities for detained individuals who use wheelchairs at
22 Krome, among many other issues.

23 518. Another example is Florence Correctional Center's lack of
24 accessibility to persons with mobility impairments like Plaintiff Sergio Salazar
25 Artaga. Because of his cerebral palsy, Mr. Salazar Artaga has difficulty standing,
26 ambulating, and using the right side of his body. The shower to accommodate
27 people with disabilities at Florence has been nonfunctional for the duration of Mr.
28 Salazar Artaga's time at the facility. As a result, he has been nervous to take a

1 shower in the standard showers without slipping, falling, and hurting himself.

2 While he made a request for a shower chair so that he would be less likely to fall,
3 he was in the facility for nearly three months before he received the shower chair.

4 519. Defendants' failure to ensure access to adequate medical and mental
5 health care, as alleged earlier in this Complaint, often has the effect of depriving
6 Disability Subclass members of access to Detention Facility programs and services.

7 520. For example, instead of providing Plaintiff Melvin Murillo Hernandez
8 timely consultation with an allergist and ready access to an EpiPen, LaSalle staff
9 isolated him. This, and his repeated, avoidable bouts of anaphylactic shock, deny
10 him access to the programs and activities accessible to other detained individuals.

11 521. As another example, while detained at Adelanto, Plaintiff Luis Manuel
12 Rodriguez Delgadillo has not been provided therapy or all of the psychotropic
13 medication he took prior to detention, causing him to repeatedly have acute mental
14 health episodes that have denied him access to the programs and activities
15 accessible to non-disabled detained individuals.

16 **3. Defendants Systemically Fail to Ensure Adequate Screening to Identify,**
17 **Track, and Accommodate Detained Individuals with Disabilities.**

18 522. Defendants' Detention Facilities across the country fail to adequately
19 identify, track, and provide accommodations for detained individuals with
20 disabilities as required by Section 504.

21 523. Defendants' inadequate screening procedures, as alleged earlier this
22 Complaint, also result in the failure to identify individuals with disabilities, track
23 their needs, and provide accommodations required by their disabilities.

24 524. Defendants have sole authority to transfer and move detained
25 individuals throughout their network of Detention Facilities. Class members are
26 regularly shuffled from facility to facility with little to no regard for whether they
27 have a disability that requires a particular placement, and Defendants fail to ensure
28

1 that facilities in which Detained individuals with disabilities are housed provide
2 access to the same essential services and programs as in all other facilities.

3 525. Upon transfer, information regarding any prior identification of
4 disability is often not communicated, resulting in inadequate tracking of individuals
5 with disabilities. Further, accommodations that have been approved and provided
6 by Defendants are often discontinued or removed without cause when a person is
7 transferred to a new facility. Individuals with disabilities must restart the process of
8 requesting reasonable accommodations at each new facility, resulting in delay and
9 denial of receiving those accommodations to meaningfully access programs and
10 services.

11 526. The Plaintiffs' experiences are illustrative of Detention Facilities'
12 failure to perform adequate screening and tracking of the needs of individuals with
13 disabilities.

14 527. For example, Plaintiff José Baca Hernández is blind and has been
15 detained at Theo Lacy and Adelanto, neither of which conducted an intake that
16 included a discussion of reasonable accommodations. At Adelanto, it took more
17 than one year for an Americans with Disabilities Act ("ADA") Coordinator to meet
18 with Mr. Baca.

19 528. Plaintiff Alcocer Chavez is Deaf and communicates in ASL, but he
20 was not provided ASL interpretation during medical intake. Accordingly, he was
21 unable to communicate effectively with medical staff, among many other issues.

22 529. When Plaintiff Jimmy Sudney arrived at Adelanto, it took over a week
23 to see a doctor for an intake meeting, and that doctor asked only about his mental
24 health. When he arrived at Eloy, it took almost a month to have an intake meeting.
25 Meanwhile, upon arrival at Eloy, he went without medication that he requires daily
26 to stabilize his medical and mental health needs.

27 530. Plaintiff Alex Hernandez's rotator cuff and inflammation and pain in
28 his back, legs, hip and feet impede his mobility and range of motion. When Mr.

1 Hernandez was transferred to Etowah, he was given a bottom bunk profile based on
2 his disability, but he was assigned to a top bunk. He was told that no bottom bunks
3 were available at that time.

4 531. As a result, for a month and half Mr. Hernandez was required to sleep
5 on the top bunk. There was no ladder to get up to the top bunk, and no railing or
6 other device to use for support. Mr. Hernandez relied on assistance from other
7 detained individuals assigned to his cell to lift him so he could get into bed and also
8 help support him as he was getting out of bed. He was fearful of falling or
9 sustaining further injury to his shoulder, back, hip, and legs.

10 532. Plaintiff Sergio Salazar Artaga's initial screenings at Florence
11 indicated that he had no mental health disability. As a result, he did not timely
12 receive psychotropic medication, and he ended up on suicide watch twice over the
13 next month for banging his head on the wall and auditory and visual hallucinations.

14 533. At Adelanto, Plaintiff Luis Manuel Rodriguez Delgadillo's intake was
15 deficient, relying on his incomplete self-reporting of his psychotropic medication,
16 declining to coordinate with his prior treating doctor even when provided that
17 doctor's contact information by his family, and failing to gather records from that
18 treatment. As a result, Mr. Rodriguez Delgadillo has become unstable and has had
19 repeated episodes of acute mental health distress.

20 534. Further, Disability Rights California's 2019 report highlighted
21 numerous examples of deficiencies in the intake screening process at Adelanto that
22 resulted in discrimination against individuals with disabilities.⁵⁴²

23 535. For example, Adelanto's list of recognized disabilities in its screening
24 protocol is arbitrary and incomplete.⁵⁴³ Many common disabilities are missing
25 entirely, such as those related to vision, hearing, and communication.⁵⁴⁴ Physical

26 ⁵⁴² Disability Rights California, *supra* note 36.

27 ⁵⁴³ *Id.* at 41.

28 ⁵⁴⁴ *Id.*

1 disabilities are inappropriately limited to “para/quadruplegia,” “stroke,”
 2 “amputation,” and “cardiac condition.”⁵⁴⁵ There is no screening for housing
 3 accommodation needs, such as a placement in a lower bunk or accessible cell for
 4 detained individuals with mobility impairments.⁵⁴⁶ The facility’s screening also
 5 lacks a reliable or valid tool to identify detained individuals with intellectual or
 6 developmental disabilities.⁵⁴⁷

7 536. The DRC Adelanto report further documented the risk and, in some
 8 instances, actual harm that results from Defendants’ failure to adequately identify
 9 and track individuals with disabilities. For example, a deaf asylum seeker at
 10 Adelanto was not provided sign language interpretation and had to go months with
 11 no way to communicate with staff, including during medical appointments.⁵⁴⁸
 12 Because of this, “[h]e had to point at the area of his body that was hurting and hope
 13 medical staff understood.”⁵⁴⁹

14 537. Harm to people with disabilities also includes members of the
 15 Disability Subclass being subjected to punitive and counter-therapeutic responses
 16 when they engage in behavior that is a manifestation of their disability.⁵⁵⁰ For
 17 example, a detained individual at Adelanto reported that he was pepper sprayed
 18 after staff saw him attempting suicide.⁵⁵¹

19 **4. Defendants Systemically Fail to Prevent Improper Use of Segregation**
 20 **for Detained Individuals with Disabilities.**

21 538. As alleged earlier in this Complaint, Defendants repeatedly place
 22 detained individuals with disabilities in segregation, despite their own experts

23 ⁵⁴⁵ *Id.*

24 ⁵⁴⁶ *Id.*

25 ⁵⁴⁷ *Id.*

26 ⁵⁴⁸ *Id.* at 42.

27 ⁵⁴⁹ *Id.*

28 ⁵⁵⁰ *Id.* at 27.

⁵⁵¹ *Id.*

1 having found that segregation is inappropriate and potentially harmful to detained
 2 individuals with disabilities, particularly to detained individuals with mental health
 3 disabilities.⁵⁵²

4 539. Indeed, Defendants' Segregation Directive recognizes that segregation
 5 of detainees with disabilities and other vulnerable detainees "should be used only as
 6 a last resort and when no other viable housing options exist."⁵⁵³

7 540. Detainee Death Reviews document improper placement and
 8 monitoring of individuals with disabilities as a contributing factor to a number of
 9 the deaths in Defendants' custody, including at Houston,⁵⁵⁴ Hudson County,⁵⁵⁵ and
 10 Farmville,⁵⁵⁶ among others.

11 541. Additionally, in a 2017 report, OIG found numerous instances in
 12 which ICE failed to comply with its duties to oversee and monitor the segregation
 13 of detained individuals with mental health conditions.⁵⁵⁷

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 16 ⁵⁵² U.S. Immigration & Customs Enf't, *Directive No. 11065.1: Review of the Use of*
 17 *Segregation for ICE Detainees*, at ¶¶ 3.3, 5.2(5) (Sept. 4, 2013),
https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

18 ⁵⁵³ *Id.* at ¶ 2.

19 ⁵⁵⁴ *See, e.g.*, Office of Professional Responsibility, Office of Detention Oversight,
 20 *Detainee Death Review – Clemente Ntangola Mponda*,
<https://www.ice.gov/doclib/foia/reports/ddr-mponda.pdf>.

21 ⁵⁵⁵ *See, e.g.*, Office of Professional Responsibility, Office of Detention Oversight,
 22 *Detainee Death Review – Santo Carela*,
<https://www.ice.gov/doclib/foia/reports/ddr-Carela.pdf>.

23 ⁵⁵⁶ *See, e.g.*, U.S. Dep't. of Homeland Sec., *Report of Investigation: RAMIREZ-*
 24 *Ramirez, Anibal/Unknown/0109 Detainee/Alien – Death (Known Cause – Terminal*
 25 *Illness)/FARMVILLE, PRINCE EDWARD, VA*,
[https://www.documentcloud.org/documents/2695511-Ramirez-Ramirez-](https://www.documentcloud.org/documents/2695511-Ramirez-Ramirez-Anibal.html#document/)
[Anibal.html#document/](https://www.documentcloud.org/documents/2695511-Ramirez-Ramirez-Anibal.html#document/).

26 ⁵⁵⁷ Office of Inspector Gen., Office of Homeland Sec., *OIG-17-119: ICE Field*
 27 *Offices Need to Improve Compliance with Oversight Requirements for Segregation*
 28 *of Detainees with Mental Health Conditions* (Sept. 29, 2017), available at
<https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

1 542. Defendants also fail to oversee and monitor detention facilities that
2 utilize segregation to house detained individuals with disabilities due to
3 inaccessible facilities or a lack of accommodations or auxiliary aids and services.
4 For example, incident reports obtained and evaluated by The International
5 Consortium of Investigative Journalists depict dozens of cases between 2012 and
6 2017 of detained individuals in segregation because of a disability that required use
7 of an aid, such as a wheelchair, cane, or crutches, or because of a mental health
8 disability.⁵⁵⁸

9 543. Plaintiff Jimmy Sudney was never placed in segregation while in
10 county jail or state prison, but he has been placed in disciplinary segregation while
11 in ICE custody. Mr. Sudney was placed in disciplinary segregation at Adelanto
12 because he filed a grievance against an officer who was harassing him and her
13 fiancée—another guard—who had joined in that conduct. They had a verbal
14 altercation and Mr. Sudney was put in segregation for one week. There was no
15 hearing before Adelanto put Mr. Sudney in segregation and the mental health
16 clearance was cursory—when Mr. Sudney reported that he would not hurt or kill
17 himself in segregation, they cleared him to be segregated. While he was in
18 segregation, the guards knocked loudly on the door, and the people above him made
19 noise that triggered a PTSD flashback. Mr. Sudney jumped under the bed and
20 relived the earthquake in Haiti with his house coming down over him.

21 544. Plaintiff Jose Segovia Benitez has been placed in disciplinary
22 segregation for three to five days on several occasions. During some of those
23 segregation stays, on information and belief, he often did not receive daily medical
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26 ⁵⁵⁸ Spencer Woodman, et al., *Solitary Voices: Thousands of Immigrants Suffer in*
27 *Solitary Confinement in ICE Detention*, THE INTERCEPT (May 20, 2019),
28 [https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-](https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-detention/)
[detention/](https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-detention/).

1 or mental health check-ins, despite Adelanto's records documenting his physical
2 and mental health conditions.

3 545. Plaintiff Marco Montoya Amaya not only has PTSD and major
4 depressive disorder, but has also been living with a likely untreated brain parasite
5 for over a year. This brain parasite, left untreated, can cause severe and life-
6 threatening symptoms, including irreversible cognitive and psychiatric symptoms.
7 Mr. Montoya Amaya was placed in disciplinary segregation for approximately one
8 week in May 2019 for accidentally eating an extra tray of food based on his failure
9 to understand the officer's instructions. While in segregation, Mr. Montoya Amaya
10 did not receive daily mental health or physical health evaluations, instead receiving
11 only two mental health evaluations overall. To the extent he may have received
12 some health evaluation before he entered segregation, that health evaluation was
13 incomplete and incorrect; for example, despite indicating that the health
14 professional had completed a chart review, a note in his medical record regarding
15 segregation falsely indicated that Mr. Montoya Amaya did not have any headaches
16 or dizziness, despite having those symptoms regularly documented throughout his
17 medical records for over a year.

18 546. Plaintiff Faour Abdallah Fraihat has been placed in medical
19 segregation for medical reasons four times while detained at Adelanto, including
20 for around one week each of the two times he returned to Adelanto from the
21 hospital. A doctor would check on him for at most ten minutes per day, and nurses
22 came twice per day to check his vitals and bring him medication. Each of the four
23 times Mr. Fraihat was in medical segregation he was not allowed out of his cell at
24 any time, though he asked to be let out.

25 547. LaSalle staff has confined Plaintiff Melvin Murillo Hernandez to
26 medical segregation since arriving at LaSalle on May 8, 2019, based on his severe
27 allergies. Though he relied on other detained individuals to bring him to facility
28 staff during previous anaphylactic shocks in which he lost consciousness, he is now

1 confined alone in a cell 24 hours a day. Facility staff now bring all of his meals,
2 which consist mostly of eggs and rice, to his cell.

3 548. Plaintiff Hamida Ali, who has schizophrenia, was segregated and
4 placed in a dorm by herself for approximately nine months, causing her to
5 experience extreme psychological distress and suicidal ideation.

6 **5. Defendants Systemically Fail to Provide People with Disabilities with**
7 **Reasonable Accommodations, Auxiliary Aids, and Effective**
8 **Communication.**

9 549. Despite the supposed existence of the centralized systems described
10 above, as a matter of practice, Defendants systemically fail to ensure that Detention
11 Facilities provide detained individuals with disabilities with necessary
12 accommodations, including mobility devices or other aids necessary for detained
13 individuals with mobility disabilities to engage in activities of daily living;
14 auxiliary aids, such as video phones, ASL interpretation, or effective means of
15 communication for persons who are deaf or hard of hearing; and materials in
16 Braille, large print, or other alternate formats for persons who are blind or have low
17 vision. As a result, Defendants systemically fail to ensure detained individuals with
18 disabilities have meaningful access to the benefits of Defendants' Detention
19 Facilities Program.

20 550. As an initial matter, Defendants do not ensure Detention Facilities
21 provide information during intake about the facility's reasonable accommodation
22 and modification process and and otherwise fail to make available information
23 regarding Section 504, its implementation regulations, and its applicability to
24 Defendants' programs or activities in such a manner as is necessary to apprise
25 detained individuals of the protections against discrimination assured them by
26 Section 504 and its implementation regulations. For example, there is often no
27 formal process in place to request, review, or respond to such requests.
28

1 551. Defendants also fail to ensure that, upon intake, Detention Facilities
2 provide information to detained individuals regarding their rights under
3 Section 504, including ensuring in an accessible format how to file a complaint
4 under Section 504 and ensuring that such information is available in common areas
5 in a manner that is accessible to individuals who have disabilities.

6 552. Further, Defendants fail to ensure that detention staff are trained in
7 Section 504 obligations and related interactions with detained individuals with
8 disabilities. For example, in Adelanto the Disability Compliance Manager disclosed
9 he did not have prior disability-related training and received only a four-hour online
10 training to fulfill the role requirement.⁵⁵⁹

11 553. The result of these failures is a broken system in which disability-
12 based needs are routinely ignored, denying members of the Disability Subclass
13 access to needed services and excluding them from critical benefits of Defendants'
14 Detention Facilities Program.

15 554. Defendants fail to ensure that Detention Facilities provide deaf and
16 hard of hearing detained individuals with auxiliary aids and services necessary to
17 ensure effective communication. For example, Defendants fail to ensure that
18 qualified interpreters are available for such interactions as medical appointments
19 and disciplinary proceedings.

20 555. In many Detention Facilities, detained individuals who are deaf or hard
21 of hearing must rely on peers, hand gestures, or lip reading to attempt to
22 communication with staff because Defendants fail to ensure they have access to a
23 qualified interpreter.

24 556. Further, many Detention Facilities lack timely processes to obtain
25 devices and services needed to achieve effective communication. The processes to
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28 ⁵⁵⁹ Disability Rights California, *supra* note 36, at 47.

1 request such devices are also discriminatory in themselves, because individuals are
2 often required to submit a written request that does not come in accessible formats.

3 557. For example, Plaintiff Alcocer Chavez is Deaf and communicates in
4 ASL. He has repeatedly been denied effective communication at Adelanto, which
5 hinders his ability to communicate with ICE officials and medical staff. During Mr.
6 Alcocer Chavez's time at Adelanto, he has never been provided with an ASL
7 interpreter. Mr. Alcocer Chavez has had multiple interactions with ICE and medical
8 staff without interpretation. There were several occasions during which he
9 communicated with a doctor by writing notes back and forth. Due to his limited
10 English, he did not understand much of the vocabulary the doctor used.
11 Additionally, ICE officials have tried to convince Mr. Alcocer Chavez to sign
12 documents without effectively communicating what the documents say.

13 558. Though Mr. Alcocer Chavez had access to a videophone when he was
14 incarcerated in Riverside, California, he has not had access to a videophone in ICE
15 detention at the Nevada Southern Detention Center or at Adelanto. Mr. Alcocer
16 Chavez has requested a videophone at Adelanto, but a supervisor denied his
17 request; instead, he was given limited access to Skype for short periods of time, and
18 he is no longer allowed to even use Skype. He has also been granted TTY access
19 for short periods of time. Yet the TTY is an antiquated communication system
20 largely replaced in the deaf community by videophone. TTYs requires typing,
21 which is difficult for most deaf people, including Mr. Alcocer Chavez, because of
22 limited reading and writing skills in English. When Mr. Alcocer Chavez uses the
23 TTY, guards take him to the intake area and lock him in a holding tank for hours
24 before and after the call, measures not required of hearing detained individuals who
25 wish to use a conventional telephone. As a result of ICE's failure to reasonably
26 accommodate Mr. Alcocer Chavez, he has not been able to effectively
27 communicate with his lawyers by phone while in detention.

1 559. Defendants also fail to ensure effective communication for detained
2 individuals with vision disabilities.

3 560. For example, Plaintiff José Baca Hernández is blind. Neither Theo
4 Lacy, where he had been detained, nor Adelanto, where he is currently detained,
5 provided Mr. Baca a means of reading documents about his immigration case or
6 medical care privately and independently, such as with a screen reader. At both
7 facilities, Mr. Baca has been forced to rely on others—his cell mates, attorneys,
8 and, at times, guards—to read documents for him. When he has needed to submit
9 something in writing, such as a request to meet with an ICE officer, he has had to
10 rely on others to write it for him.

11 561. Additionally, Detention Facilities routinely fail to provide inmates
12 with mobility and other physical disabilities access to mobility devices, auxiliary
13 aids, or other reasonable accommodations for their disability related-needs, and
14 they often lack adequate processes to ensure that such accommodations are
15 provided when needed.

16 562. For example, Plaintiff Faour Abdallah Fraihat has knee and back pain
17 and a disc problem in his lower back that require the use of a wheelchair for
18 mobility; his legs become numb when he tries to walk more than 10 to 15 feet.
19 Though Adelanto provided Mr. Fraihat with a temporary wheelchair when he
20 arrived in December 2016, staff took it away after one month and did not return the
21 wheelchair to him until February 2019, two days after he filed a grievance because
22 he had been making daily requests for months. For the more than one year in
23 between, Mr. Fraihat was unable to get to the yard or to the cafeteria to eat. When
24 officers did not bring him food, he ate whatever he was able to purchase from the
25 commissary. His friends were not allowed to bring food from the cafeteria to him.

26 563. Staff also assigned Mr. Fraihat to the top bunk in his cell, though it is
27 not accessible to him. The few times he made it up into the top bunk, it was very
28 painful for him and he could not get down to use the bathroom. One time, he

1 slipped on the floor because he could not climb up. Mr. Fraihat has never met with
2 an ADA Coordinator at Adelanto, and several of his requests for reasonable
3 accommodations have been denied or delayed.

4 564. Plaintiff Aristoteles Sanchez Martinez has an expanding hernia,
5 neuropathy, and a foot injury that has caused a bone spur and bone deterioration. As
6 a result, Mr. Martinez has pain and uses a wheelchair for mobility. When Mr.
7 Sanchez Martinez was transferred to the Stewart facility, he was placed in full
8 restraints and could not use his wheelchair—leaving him no choice but to walk,
9 despite his documented medical conditions that impair his mobility Three days after
10 he arrived at Stewart, he was given a “provisional” wheelchair that was too small
11 and uncomfortable. Over two weeks after arriving at Stewart, he was given a used,
12 heavy wheelchair that strained his hernia every time he pushed it. A month after
13 arriving at Stewart, Mr. Sanchez Martinez was finally given a suitable wheelchair
14 when another detained individual who used a wheelchair left. At Stewart, Mr.
15 Sanchez Martinez also sometimes has difficulty going through doorways without
16 assistance from others. He was never offered a cane or crutches to help him walk
17 shorter distances. There is one accessible shower, but the shower seat appears
18 broken and not properly affixed and Mr. Sanchez Martinez fears using it. Instead,
19 he has to use the wall to try to support himself when he showers.

20 565. When Mr. Sanchez Martinez arrived at Stewart, he was also forced to
21 choose between his hernia belt and his back brace, despite the two accommodations
22 serving different purposes from one another. Mr. Sanchez Martinez unwillingly
23 relinquished his back brace. Despite requiring a cane or crutches to improve
24 circulation throughout his feet, Mr. Sanchez Martinez has not been provided with
25 either to help him move short distances.

26 566. Plaintiff Ruben Darío Mencías Soto has required multiple mobility
27 aids after a fall in the shower while in detention severely reduced his mobility. At
28 one time, Adelanto staff took away his crutches and told him he could have

1 crutches or a wheelchair, but not both. At the beginning of June, Adelanto took his
2 wheelchair away, even though it is too painful for him to walk to the doctor or the
3 cafeteria every time he needs to. Thus, for over a month, Mr. Mencías Soto ate only
4 one meal a day at the cafeteria and tried to cobble together enough food from the
5 commissary for the rest of the day. Rather than provide him with a mobility device,
6 staff had suggested Mr. Mencías Soto live in the medical unit, where he will not
7 have access to socialization or recreation activities. Mr. Mencías Soto only recently
8 got his wheelchair back after sustained advocacy by an attorney.

9 567. Plaintiff Jimmy Sudney received reasonable accommodations in prison
10 that are denied in ICE detention. For example, he had a wedge in prison to allow
11 him to sleep with his head up so that his eye would drain, but the Adelanto ADA
12 Coordinator denied his request because ICE has a “different standard.” In prison,
13 Mr. Sudney had special shoes for his flat feet, but Adelanto denied his request
14 because the shoes have laces. In prison, Mr. Sudney had prescription tinted glasses,
15 but ICE would not pay for what the doctor prescribed so he has lower-quality
16 glasses. An officer at Adelanto calls out “blind man walking” when she sees Mr.
17 Sudney walk by with his tinted glasses, and one time, she tried to take them away.
18 Mr. Sudney spoke with the ADA Coordinator about this harassment and he said,
19 “Can’t do nothing about it. They bully you here.”

20 568. Because of the acute pain stemming from his right hip, legs, and feet,
21 Plaintiff Alex Hernandez cannot stay standing for more than 15 to 20 minutes at a
22 time. Mr. Hernandez would benefit from a cane or walking stick.

23 569. Further, Mr. Hernandez requested an additional chair for his
24 designated-accessible cell after experiencing increased pain with prolonged sitting
25 or standing. He was told that the medical unit does not provide special chairs and to
26 instead change positions when he was in pain, despite Mr. Hernandez already
27 having received oral confirmation from Etowah staff that he could receive a
28 medical request pass for the chair. Because of his back and hip pain, it is painful for

1 him to sit on a stool because it offers no support. Further, although Mr. Hernandez,
2 was told his cell is accessible, it does not have a handrail by his toilet and it is
3 difficult for him to support himself as he gets up. Mr. Hernandez was not housed in
4 a cell that has a handrail by the toilet to assist with support.

5 570. Similarly, Mr. Hernandez does not have access to a handicapped
6 shower properly equipped with a shower seat. He is terrified of falling and further
7 injuring himself in the shower.

8 571. Mr. Hernandez had to wait over a month for a bottom bunk to open up,
9 despite having a medical pass for that bunk approved on December 21, 2018.
10 During the time he was waiting, he was forced to climb to a top bunk without a
11 ladder. He had to use tremendous effort on his right shoulder to climb up and down
12 the top bunk.

13 572. Plaintiff Sergio Salazar Artaga has been delayed and denied reasonable
14 accommodations for his cerebral palsy, a mobility disability that makes it difficult
15 for him to walk and to use the right side of his body. His metal cane was
16 confiscated when he entered Florence, and he did not receive a wooden replacement
17 until a day or two later. Because the accessible shower was broken, Mr. Salzar
18 Artaga also requested a shower chair multiple times to avoid falling. He received it
19 only after he had been at Florence for nearly three months.

20 573. Mr. Salazar Artaga also requested shoes and braces for his legs and
21 knee so that he can walk more stably in the facility. He had two falls inside
22 Florence, only after which he was provided more stable shoes. After receiving his
23 shoes, he still had a third fall on his way to immigration court on April 23, 2019,
24 but he still has not been provided with leg or knee braces. The first medical
25 provider he requested them from at Florence was unfamiliar with these braces, and
26 the second made a request for Mr. Salazar Artaga to receive the braces, provided
27 that they did not interfere with safety or security at the facility. However, when Mr.
28 Salazar Artaga went to an outside clinic for prosthetics and orthotics, he was told

1 that he would not receive the braces until ICE authorized payment for them. No
2 such authorization has happened to date, so Mr. Salazar Artaga walks unsteadily
3 without the aid of leg or knee braces, in constant fear that he will fall again.

4 574. Further, Defendants select Detention Facilities that are located in
5 remote, rural areas that do not have access to internal or off-site care providers,
6 with the effect that detained individuals with disabilities do not receive the care and
7 treatment necessary for them to have meaningful access to the privileges and
8 advantages of these Facilities provided to nondisabled detainees.

9 575. Defendants' practice of detaining people in remotely located facilities
10 also causes a shortage in resources available to accommodate people with
11 disabilities. For example, the area around LaSalle is devoid of Mexican Sign
12 Language and other rarer sign language interpreters, so Defendants cannot
13 accommodate individuals who are deaf or hard of hearing. In addition, a shortage of
14 qualified mental health professionals in these areas leads to mental health
15 conditions going untreated and cognitive disabilities going unaccommodated.

16 576. Many of the Detention Facilities are also not accessible for persons
17 with mobility impairments, and often are not equipped with videophone or video
18 relay technology, further preventing Defendants from providing reasonable
19 accommodations to detained individuals who are deaf or hard of hearing. Similarly,
20 Defendants fail to ensure that Detention Facilities have screen readers and other
21 accommodations to assist those who are blind or have low vision.

22 577. Defendants' decision to contract with facilities without ensuring they
23 have necessary services available is a significant contributing factor to their
24 inability to provide adequate care and program access for members of the Disability
25 Subclass.

26 578. For example, Plaintiff Raul Alcocer Chavez is Deaf and communicates
27 in ASL, but has never been provided ASL interpretation at Adelanto. When Mr.
28 Alcocer Chavez requested to use a videophone at Adelanto, which would have

1 enabled him to call his hearing lawyer with the use of an interpreter, a supervisor
2 denied his request. Additionally, ICE officials have tried to convince Mr. Alcocer
3 Chavez to sign documents without providing effective communication regarding
4 what the documents say.

5 579. As another example, in Folkston, the medical unit that Plaintiff
6 Aristoteles Sanchez Martinez visited twice a day to receive his insulin shots was in
7 a different building. He would either have other detained individuals help him to
8 the medical unit or he would strain his hernia and push himself there in his
9 wheelchair. His wheelchair did not easily fit through the doorways and there were
10 ramps and other walkways that required assistance for him to navigate. At Folkston,
11 whenever he had a legal visit, he had to use a non-accessible van to go to the visit.
12 Lifting himself in and out of the non-accessible van would cause him to strain his
13 hernia and risk falling due to his Charcot's foot, neuropathy, and other conditions
14 that impact his balance and mobility.

15 **6. Defendants Systemically Fail to Ensure Contractors do Not Subject**
16 **Detained Individuals with Disabilities to Discrimination on the Basis of**
17 **Their Disability.**

18 580. The criteria used by Defendants to enter into, expand, and renew
19 contracts with contractors do not take into consideration whether the contractors
20 have engaged in disability discrimination or whether they have effective systems in
21 place to ensure that detained individuals with disabilities are afforded rights secured
22 under Section 504.

23 581. This failure directly conflicts with the Defendants' Section 504
24 implementing regulations, which require Defendants to ensure that contract
25 facilities and programs are readily accessible to and usable by detained individuals
26 with disabilities. 6 C.F.R. §§ 15.10, 15.51.
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1 582. Many contractors used by Defendants to operate Detention Facilities
2 have a well-documented track record of failing to comply with disability statutes,
3 including Section 504.

4 583. For example, one of Defendant's largest contractors, CoreCivic, fails
5 to provide assistive devices, such as corrective lenses, to detained individuals with
6 disabilities.⁵⁶⁰

7 584. Additionally, as set forth above, GEO-operated Adelanto has been the
8 subject of numerous investigations, reports, and complaints documenting disability
9 discrimination.⁵⁶¹

10 585. GEO also operates the Aurora and South Texas Detention Facilities,
11 and detained individuals with disabilities have been subjected to documented
12 discrimination in both of those facilities.⁵⁶²

13 586. Nevertheless, ICE recently expanded its contract with GEO to increase
14 the capacity of the Aurora facility,⁵⁶³ and also awarded a direct contract to GEO to
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17 ⁵⁶⁰ Detainee Allies, *Testimony from Migrants and Refugees in the Otay Mesa*
18 *Detention Center*, at 13 (Jan. 2019), [http://www.detaineeallies.org/wp-](http://www.detaineeallies.org/wp-content/uploads/2019/01/FINAL_Detainee-Allies-2019-0131b.pdf)
19 [content/uploads/2019/01/FINAL_Detainee-Allies-2019-0131b.pdf](http://www.detaineeallies.org/wp-content/uploads/2019/01/FINAL_Detainee-Allies-2019-0131b.pdf).

20 ⁵⁶¹ See, e.g., Disability Rights California, *supra* note 36.

21 ⁵⁶² See, e.g., Letter from American Immigration Council & American Immigration
22 Lawyers Association to Thomas Homan, Acting Dir., Immigration & Customs
23 Enf't, Dep't of Homeland Sec. et al. (June 4, 2018) at 15,
24 [http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/co](http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf)
25 [mplaint_demands_investigation_into_inadequate_medical_and_mental_health_care](http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf)
26 [condition_in_immigration_detention_center.pdf](http://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf) (Aurora); Human Rights First,
27 *Ailing Justice: Texas* (June 2018),
28 https://www.humanrightsfirst.org/sites/default/files/Ailing_Justice_Texas.pdf
(South Texas).

⁵⁶³ *Extension of Use for Surge Beds at Aurora CDF*, Federal Business
Opportunities,
[https://www.fbo.gov/index.php?s=opportunity&mode=form&id=24bf5af8f106d92a](https://www.fbo.gov/index.php?s=opportunity&mode=form&id=24bf5af8f106d92a3abc7bc98fb8a51f&tab=core&_cview=0)
[3abc7bc98fb8a51f&tab=core&_cview=0](https://www.fbo.gov/index.php?s=opportunity&mode=form&id=24bf5af8f106d92a3abc7bc98fb8a51f&tab=core&_cview=0).

1 continue operating Mesa Verde in California after the municipality with which ICE
2 originally contracted withdrew from the contract.⁵⁶⁴

3 587. Plaintiff Hamida Ali had a GEO-employed security guard inform her
4 that she should stop saying that she was suicidal—so Ms. Ali declined to seek
5 medical help at a moment when she was actively expressing suicidal ideation, even
6 though she had a history of suicidal ideation and attempts.

7 588. Plaintiff Aristoteles Sanchez Martinez has experienced several
8 instances where he has been forced by contractors to abandon his accommodations.
9 For example, when he was transferred from Folkston to Stewart, Mr. Sanchez
10 Martinez was placed in full restraints, and staff did not allow him to use his
11 wheelchair. He was forced to walk throughout the entire day of transport in
12 constant fear of falling and suffering from potentially fatal consequences. In
13 addition, upon arriving at Stewart, the medical staff forced him to choose between
14 his back brace and hernia belt.

15 589. In addition to repeatedly being denied effective communication in the
16 form of ASL interpretation and videophone access, Plaintiff Raul Alcocer Chavez
17 has experienced several instances of harassment by staff at Adelanto. Mr. Alcocer
18 Chavez is Deaf and communicates in ASL. Staff at Adelanto mock him for that
19 fact; they respond to his signing with gang signs, and they refuse to write back
20 when he attempts to communicate with them in writing with his limited English. On
21 one occasion, a staff member used his foot to get Mr. Alcocer Chavez's attention.

22 590. On information and belief, the criteria used by Defendants to enter
23 into, expand, and renew contracts with contractors do not take into consideration
24 whether the contractors have engaged in disability discrimination, or whether they
25

26 ⁵⁶⁴ Joseph Luiz, *Mesa Verde center will stay open with new contract*, The
27 Bakersfield Californian, [https://www.bakersfield.com/news/mesa-verde-center-](https://www.bakersfield.com/news/mesa-verde-center-will-stay-open-with-new-contract/article_29aef992-410b-11e9-a913-c75ff002d758.html)
28 [will-stay-open-with-new-contract/article_29aef992-410b-11e9-a913-](https://www.bakersfield.com/news/mesa-verde-center-will-stay-open-with-new-contract/article_29aef992-410b-11e9-a913-c75ff002d758.html)
[c75ff002d758.html](https://www.bakersfield.com/news/mesa-verde-center-will-stay-open-with-new-contract/article_29aef992-410b-11e9-a913-c75ff002d758.html).

1 have effective systems in place to ensure that detained individuals with disabilities
2 are afforded rights secured under Section 504.

3 591. This failure directly conflicts with Defendants' Section 504
4 implementing regulations. Those regulations direct Detention Facilities to afford
5 persons with disabilities equal opportunity to participate in or benefit from
6 facilities' aids, benefits, or services, and to administer programs and activities in the
7 most integrated setting appropriate. 6 C.F.R. § 15.30(b)(1).

8 592. As a result, members of the Disability Subclass have been denied such
9 rights and are at significant risk of being denied those rights in the future.

10 **B. The Fifth Amendment Prohibits the Federal Government from**
11 **Subjecting Members of the Disability Subclass to Conditions That Rise**
12 **to the Level of Punishment.**

13 593. The Disability Plaintiffs and the Disability Subclass challenge ICE's
14 failure to ensure that Detention Facilities do not subject civil detainees with
15 disabilities to conditions that rise to the level of punishment.

16 594. Defendants fail to adequately monitor and oversee disability-related
17 practices in Detention Facilities.

18 595. As a result, detained individuals with disabilities are subjected to the
19 Disability Practices, which individually and collectively constitute punishment
20 because they are expressly intended to punish, are not reasonably related to a
21 legitimate governmental objective, and/or are excessive in relation to that objective.

22 596. In addition, due process requires that conditions in civil Detention
23 Facilities may not be the same as or worse than those in a prison. *See King v. Cty.*
24 *of Los Angeles*, 885 F.3d 548, 556–57 (9th Cir. 2018). However, as described in
25 detail earlier in this Complaint, Defendants fail to ensure that detained individuals
26 with disabilities are held in conditions that are not the same as or worse than those
27 for persons with disabilities in criminal detention.
28

1 597. For example, Plaintiff Jimmy Sudney received reasonable
2 accommodations in prison that were denied to him in ICE detention. Though Mr.
3 Sudney had a wedge in prison to allow him to sleep with his head up so that his eye
4 would drain, Eloy and Adelanto denied his request, both stating that ICE has a
5 “different standard.” In prison, Mr. Sudney had special shoes for his flat feet, but
6 Adelanto denied his request because the shoes have laces. In prison, Mr. Sudney
7 had prescription tinted glasses, but ICE would not pay for what the doctor
8 prescribed so he has to make do with lower-quality glasses that his family
9 purchased for him.

10 598. As another example, Plaintiff Raul Alcocer Chavez is Deaf and,
11 though he had access to a videophone while he was in Riverside County Jail, he has
12 not had access to a videophone in ICE detention. Mr. Alcocer Chavez has requested
13 a videophone at Adelanto, but a supervisor denied his request, implying that he was
14 a liar and had already used it. He has only been granted occasional Skype calls to
15 his family, and TTY access for short periods of time. Yet TTY is an outdated
16 technology that requires typing, which is difficult for Mr. Alcocer Chavez because
17 he has limited reading and writing skills in English. A videophone would allow him
18 to communicate in his primary language, ASL. Mr. Alcocer Chavez had better
19 communication because of the videophone in the Riverside County Jail.

20 599. Plaintiff José Baca Hernández is blind and, when he was in jail, an
21 ADA Coordinator checked in with him monthly regarding his need for
22 accommodations and other disability-related needs. In ICE detention, neither Theo
23 Lacy nor Adelanto conducted an intake that included a discussion of reasonable
24 accommodations. At Adelanto, it took more than one year from the time he arrived
25 at the facility for an ADA Coordinator to meet with him.
26
27
28

CLASS ALLEGATIONS

IX. Class

600. All individual Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class of all people currently detained, or who in the future will be detained, in ICE custody who are now, or will in the future be, subjected to the Challenged Practices as a result of Defendants' failure to adequately administer, monitor, or oversee conditions at Detention Facilities (the "Class").

601. The Class is so numerous that joinder of all members is impracticable. Recent reports state that the daily population of ICE detainees in Detention Facilities exceeds 50,000,⁵⁶⁵ all of whom are at serious risk of substantial harm due to Defendants' wholly inadequate monitoring and oversight policies and practices. Members of the Class are geographically dispersed at Detention Facilities throughout the country.

602. There are questions of law and fact common to the members of the Class. Such questions include, but are not limited to:

- a. Whether, as a result of Defendants' failure to ensure that Detention Facilities provide minimally adequate health care and other conditions of confinement, members of the Class are subjected to one or more Challenged Practices;
- b. Whether, as a result of Defendants' failure to ensure that Detention Facilities provide minimally adequate health care and other conditions of confinement, members of the Class are subjected to punishment in violation of the Due Process Clause of the Fifth Amendment;

⁵⁶⁵ Isabela Dias, *ICE Is Detaining More People Than Ever—and for Longer*, Pacific Standard (Aug. 1, 2019), <https://psmag.com/news/ice-is-detaining-more-people-than-ever-and-for-longer>.

- 1 c. Whether, as a result of Defendants' failure to ensure that
2 Detention Facilities provide minimally adequate health care and
3 other conditions of confinement, members of the Class are at
4 substantial risk of serious harm in violation of the Due Process
5 Clause of the Fifth Amendment;
- 6 d. Whether Defendants have been deliberately indifferent to the
7 serious health care and other needs of Class members; and
- 8 e. Whether Defendants have systemically abdicated their
9 constitutional and statutory duty to monitor conditions in the
10 Detention Facilities.

11 603. Defendants are expected to raise common defenses to these claims,
12 including denying that their actions violate the law.

13 604. The claims of the Plaintiffs are typical of those of the Class, as their
14 claims arise from the same policies, practices, omissions, or courses of conduct, and
15 their claims are based on the same theory of law as the Class's claims.

16 605. Plaintiffs are capable of fairly and adequately protecting the interests
17 of the Class because Plaintiffs do not have any interests antagonistic to the Class.
18 Plaintiffs, as well as the Class members, seek to enjoin the unlawful acts and
19 omissions of Defendants. Finally, Plaintiffs are represented by counsel experienced
20 in civil rights litigation, litigation regarding the rights of detained individuals, and
21 complex class action litigation.

22 606. This action is maintainable as a class action pursuant to Federal Rule
23 of Civil Procedure 23(b)(1) because there are more than 50,000 class members, and
24 the prosecution of separate actions by individuals would create a risk of
25 inconsistent and varying adjudications, which in turn could establish conflicting
26 and incompatible standards of conduct for Defendants. Additionally, the
27 prosecution of separate actions by individual members could result in adjudications
28

1 with respect to individual members that, as a practical matter, would substantially
2 impair the ability of other members to protect their interests.

3 607. This action is also maintainable as a class action pursuant to Federal
4 Rule of Civil Procedure 23(b)(2) because Defendants' policies, practices, actions,
5 and omissions that form the basis of this Complaint are common to and apply
6 generally to all members of the Class, and the injunctive and declaratory relief
7 sought is appropriate and will apply to all members of the Class. Defendants'
8 monitoring and oversight practices and policies are centrally promulgated,
9 disseminated, and enforced. The injunctive and declaratory relief sought is
10 appropriate and will apply to all members of the Class.

11 **X. Segregation Subclass**

12 608. The Segregation Plaintiffs bring this action on their own behalf and,
13 pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil
14 Procedure, on behalf of a subclass (the "Segregation Subclass") consisting of all
15 people currently detained, or who in the future will be detained, in ICE custody
16 who are now, or will in the future be, subjected to the Segregation Practices as a
17 result of Defendants' failure to adequately administer, monitor, or oversee
18 conditions at Detention Facilities.

19 609. The Segregation Subclass is so numerous that joinder of all members
20 is impracticable. For example, a 2017 OIG report looked at segregation placements
21 at just seven facilities from October 1, 2015, to June 30, 2016. During that time,
22 there were 713 segregation placements for detained individuals with mental health
23 conditions.⁵⁶⁶ In addition, members of the Segregation Subclass are geographically
24 dispersed at Detention Facilities throughout the country.

26 ⁵⁶⁶ Office of Inspector Gen., Dep't of Homeland Sec., *OIG-17-119: ICE Field*
27 *Offices Need to Improve Compliance with Oversight Requirements for Segregation*
28 *of Detainees with Mental Health Conditions*, at 15 (Sep. 29, 2017),
<https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

1 610. There are questions of law and fact common to the members of the
2 Segregation Subclass. Such questions include, but are not limited to:

- 3 a. Whether Defendants violate the Due Process Clause of the Fifth
4 Amendment by failing to ensure that placement of detained
5 individuals in administrative and disciplinary segregation at
6 Detention Facilities is consistent with constitutional
7 requirements;
- 8 b. Whether Defendants have been deliberately indifferent to the
9 Subclass members' serious risk of substantial injury from the
10 debilitating isolation and inhumane conditions to which they are
11 subjected; and
- 12 c. Whether the Segregation Practices constitute punishment in
13 violation of the Due Process Clause of the Fifth Amendment.

14 611. Defendants are expected to raise common defenses to these claims,
15 including denying that their actions violated the law.

16 612. The claims of the Segregation Plaintiffs are typical of those of the
17 Segregation Subclass, as their claims arise from the same policies, practices, or
18 courses of conduct, and their claims are based on the same theory of law as the
19 Segregation Subclass's claims.

20 613. The Segregation Plaintiffs are capable of fairly and adequately
21 protecting the interests of the Segregation Subclass because these Plaintiffs do not
22 have any interests antagonistic to the Subclass. The Segregation Plaintiffs, as well
23 as the Segregation Class members, seek to enjoin the unlawful acts and omissions
24 of Defendants. Finally, the Segregation Plaintiffs are represented by counsel
25 experienced in civil rights litigation, litigation regarding the rights of detained
26 individuals, and complex class action litigation.

27 614. This action is maintainable as a class action pursuant to Federal Rule
28 of Civil Procedure 23(b)(1) because the Segregation Subclass exceeds 1,000

1 members, and the prosecution of separate actions by individuals would create a risk
2 of inconsistent and varying adjudications, which in turn could establish
3 incompatible standards of conduct for Defendants. Additionally, the prosecution of
4 separate actions by individual members could result in adjudications with respect to
5 individual members that, as a practical matter, would substantially impair the ability
6 of other members to protect their interests.

7 615. This action is also maintainable as a class action pursuant to Federal
8 Rule of Civil Procedure 23(b)(2) because Defendants' monitoring and oversight
9 policies and practices regarding segregation are common to and apply generally to
10 all members of the Segregation Subclass, and the injunctive and declaratory relief
11 sought is appropriate and will apply to all members of the Segregation Subclass.
12 Defendants' monitoring and oversight practices and policies regarding segregation
13 are centrally promulgated, disseminated, and enforced. The injunctive and
14 declaratory relief sought is appropriate and will apply to all members of the
15 Segregation Subclass.

16 **XI. Disability Subclass**

17 616. The Disability Plaintiffs bring this action on their own behalf and,
18 pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil
19 Procedure, on behalf of a subclass (the "Disability Subclass") consisting of all
20 qualified individuals with a disability, as that term is defined in 29 U.S.C. § 705(9),
21 who are now, or will in the future be, subjected to the Disability Practices as a
22 result of Defendants' failure to adequately administer, monitor, and oversee
23 conditions at Detention Facilities.

24 617. The Disability Subclass is so numerous that joinder of all members is
25 impracticable. For example, according to a 2008 Washington Post report, internal
26 ICE memos estimate that about 15% of the detained population (which would be in
27 excess of 8,000 detained individuals with today's detention population) have
28

1 mental health disabilities.⁵⁶⁷ The total number of detained individuals with any
 2 disability exceeds this number. In addition, the Disability Subclass is
 3 geographically dispersed at Detention Facilities throughout the country.

4 618. There are questions of law and fact common to the members of the
 5 Disability Subclass. Such questions include, but are not limited to:

- 6 a. Whether Defendants' failure to ensure that Detention Facilities
 7 have in place systems that identify detained individuals with
 8 disabilities, and provide for reasonable accommodations for
 9 detained individuals with disabilities, violates Section 504;
- 10 b. Whether Defendants' failure to ensure that Detention Facilities
 11 have in place systems to provide auxiliary aids and services to
 12 ensure effective communications with detained individuals with
 13 disabilities violates Section 504;
- 14 c. Whether Defendants' failure to ensure that Detention Facilities
 15 do not use segregation in lieu of proper mental health treatment
 16 violates Section 504;
- 17 d. Whether the discriminatory effect on detained individuals with
 18 disabilities of Defendants' selection of Detention Facilities and
 19 contractors violates Section 504; and
- 20 e. Whether the Disability Practices constitute punishment in
 21 violation of the Due Process Clause of the Fifth Amendment.

22 619. Defendants are expected to raise common defenses to these claims,
 23 including denying that their actions violated the law.

24
 25
 26 ⁵⁶⁷⁵⁶⁷ Dana Priest et al., *Suicides Point to Gaps in Treatment: Errors in Psychiatric*
 27 *Diagnoses and Drugs Plague Strained Immigration System*, Wash. Post (May 13,
 28 2008), https://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d3p1.html?noredirect=on.

1 620. The claims of the Disability Plaintiffs are typical of those of the
2 Disability Subclass, as their claims arise from the same policies, practices, or
3 courses of conduct, and their claims are based on the same theory of law as the
4 Disability Subclass's claims.

5 621. Plaintiffs are capable of fairly and adequately protecting the interests
6 of the Disability Subclass because the Disability Plaintiffs do not have any interests
7 antagonistic to the class. The Disability Plaintiffs, as well as the Disability Subclass
8 members, seek to enjoin the unlawful acts and omissions of Defendants. Finally,
9 the Disability Plaintiffs are represented by counsel experienced in civil rights
10 litigation, litigation regarding the rights of detained individuals, and complex class
11 action litigation.

12 622. This action is maintainable as a class action pursuant to Federal Rule
13 of Civil Procedure 23(b)(1) because the Disability Subclass exceeds 8,000
14 members, and the prosecution of separate actions by individuals would create a risk
15 of inconsistent and varying adjudications, which in turn could establish
16 incompatible standards of conduct for Defendants. Additionally, the prosecution of
17 separate actions by individual members could result in adjudications with respect to
18 individual members that, as a practical matter, would substantially impair the ability
19 of other members to protect their interests.

20 623. This action is also maintainable as a class action pursuant to Federal
21 Rule of Civil Procedure 23(b)(2) because Defendants' monitoring and oversight
22 policies and practices relevant to detained individuals with disabilities are common
23 to and apply generally to all members of the Disability Subclass, and the injunctive
24 and declaratory relief sought is appropriate and will apply to all members of the
25 Disability Subclass. Defendants' disability policies are centrally promulgated,
26 disseminated, and enforced. The injunctive and declaratory relief sought is
27 appropriate and will apply to all members of the Disability Subclass.
28

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

XII. Violation of the Due Process Clause of the Fifth Amendment: Failing to Monitor and Prevent the Challenged Practices (All Plaintiffs and the Class Against All Defendants).

624. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth herein.

625. By their policies, omissions, and practices described herein, Defendants fail to adequately monitor, oversee, and administer Detention Facilities, and as a result, Plaintiffs and the Class are subjected to the Challenged Practices.

626. The Challenged Practices, alone or in combination, constitute punishment and subject Individual Plaintiffs and the Class to a significant risk of serious harm.

627. As a result of the Challenged Practices, the Organizational Plaintiffs have had to divert resources, and have had their missions frustrated.

628. Defendants have a nondelegable duty to ensure that the conditions of confinement in the facilities operated by ICE's employees and contractors are constitutionally adequate.

629. These policies, omissions, and practices have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert with them, in their official capacities, and are the proximate cause of the Plaintiffs' and the Class's ongoing deprivation of rights secured by the United States Constitution under the Fifth Amendment.

630. Defendants have been and are aware of all the deprivations complained of herein and have condoned or been deliberately indifferent to such conduct.

SECOND CLAIM FOR RELIEF

XIII. Violation of the Due Process Clause of the Fifth Amendment: Failing to Monitor and Prevent the Segregation Practices (Organizational Plaintiffs, Segregation Plaintiffs, and the Segregation Subclass Against All Defendants).

631. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as though fully set forth herein.

632. By their policies, omissions, and practices described herein, Defendants fail to adequately monitor, oversee, and administer segregation at Detention Facilities. As a result, the Segregation Plaintiffs and the Segregation Subclass are subjected to the Segregation Practices, which constitute punishment and subject them to a substantial risk of serious harm and injury, including without limitation harm to their mental health and subjecting them to conditions of extreme social isolation and environmental deprivation.

633. As a result of the Segregation Practices, the Organizational Plaintiffs have had to divert resources, and have had their missions frustrated.

634. These policies, omissions, and practices have been and continue to be implemented by Defendants and their agents, officials, employees, and all persons acting in concert with them, in their official capacities, and are the proximate cause of the Organizational Plaintiffs, Segregation Plaintiffs' and the Segregation Subclass's ongoing deprivation of rights secured by the United States Constitution under the Fifth Amendment.

635. Defendants have a nondelegable duty to ensure that detained individuals are not subject to segregation practices that constitute punishment, or that create a substantial risk of significant harm and injury from inadequate mental health treatment and conditions of extreme social isolation and environmental deprivation.

1 636. Defendants have been and are aware of all the deprivations
2 complained of herein and have condoned or been deliberately indifferent to such
3 conduct.

4 **THIRD CLAIM FOR RELIEF**

5 **XIV. Violation of Due Process Clause of the Fifth Amendment: Failing to** 6 **Monitor and Prevent Disability-Related Practices That Constitute** 7 **Punishment (Organizational Plaintiffs, Disability Plaintiffs, and** 8 **Members of the Disability Subclass Against All Defendants).**

9 637. Plaintiffs reallege and incorporate the allegations set forth in the
10 preceding paragraphs as though fully set forth herein.

11 638. By their policies, omissions, and practices described herein,
12 Defendants fail to adequately monitor, oversee, and administer Detention Facilities.
13 As a result, the Disability Plaintiffs and the Disability Subclass are subject to
14 conditions of confinement that constitute punishment.

15 639. As a result of these policies, omissions, and practices, the
16 Organizational Plaintiffs have had to divert resources, and have had their missions
17 frustrated.

18 640. These policies, omissions, and practices have been and continue to be
19 implemented by Defendants and their agents, officials, employees, and all persons
20 acting in concert with them, in their official capacities, and are the proximate cause
21 of the Organizational Plaintiffs, Disability Plaintiffs' and the Disability Subclass's
22 ongoing deprivation of rights secured by the United States Constitution under the
23 Fifth Amendment.

24 641. Defendants have a nondelegable duty to ensure that members of the
25 Disability Subclass are not held in conditions that are punitive in violation of the
26 Due Process Clause.

27 642. The conditions described above for members of the Disability
28 Subclass, alone or in combination, are identical to, similar to, or more restrictive

1 than those under which persons accused or convicted of crimes are confined in jails
2 or prisons; are expressly intended to punish civil detainees; are not reasonably
3 related to legitimate governmental objective; and/or are excessive in relation to any
4 proffered objective and more restrictive than necessary. This violates the Due
5 Process Clause.

6 643. Defendants have been and are aware of all the deprivations
7 complained of herein and have condoned or been deliberately indifferent to such
8 conduct.

9 **FOURTH CLAIM FOR RELIEF**

10 **XV. Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794** 11 **(Organizational Plaintiffs, Disability Plaintiffs, and the Disability** 12 **Subclass Against Defendants DHS, ICE, and IHSC).**

13 644. Plaintiffs reallege and incorporate the allegations set forth in the
14 preceding paragraphs as though fully set forth herein.

15 645. At all times relevant to this action, Defendants are federal executive
16 agencies within the meaning of the Rehabilitation Act. As such, they are required to
17 comply with the provisions of Section 504.

18 646. Defendants are legally responsible for all violations of Section 504
19 committed by their contractors arising from their operation of Detention Facilities.
20 6 C.F.R. § 15.30(b)(1).

21 647. Defendants are also directly responsible for their systemic use of
22 deficient monitoring and oversight practices and policies that result in the denial of
23 detained individuals with disabilities' rights under Section 504. *Id.*

24 648. Detention Facilities are required to reasonably accommodate detained
25 individuals with disabilities, to provide them with auxiliary aids and services, and
26 to ensure effective communication, so that those detained individuals can avail
27 themselves of and participate in all programs and activities offered at the Detention
28 Facilities.

1 649. As described above, Defendants have failed to ensure that Detention
2 Facilities reasonably accommodate the Disability Plaintiffs and members of the
3 Disability Subclass, provide them with auxiliary aids and services, and provide
4 them with effective communication.

5 650. Detention Facilities must also comply with regulations promulgated by
6 DHS implementing Section 504. *See* 6 C.F.R. Part 15. Detention Facilities are in
7 violation of many of these regulations, including without limitation by:

- 8 a. Denying the Disability Plaintiffs and members of the Disability
9 Subclass “the opportunity to participate in or benefit from the
10 aid, benefit, or service.” 6 C.F.R. § 15.30(b)(1)(i).
- 11 b. Affording the Disability Plaintiffs and members of the Disability
12 Subclass with “an opportunity to participate in or benefit from
13 the aid, benefit, or service that is not equal to that afforded
14 others.” 6 C.F.R. § 15.30(b)(1)(ii).
- 15 c. Providing the Disability Plaintiffs and members of the Disability
16 Subclass “with an aid, benefit, or service that is not as effective
17 in affording equal opportunity to obtain the same result, to gain
18 the same benefit, or to reach the same level of achievement as
19 that provided to others.” 6 C.F.R. § 15.30(b)(1)(iii).
- 20 d. Providing the Disability Plaintiffs and members of the Disability
21 Subclass with “different or separate aid, benefits or services . . .
22 than is provided to others unless such action is necessary to
23 provide qualified individuals with a disability with aid, benefits
24 or services that are as effective as those provided to others.” 6
25 C.F.R. § 15.30(b)(1)(iv).
- 26 e. Otherwise denying the Disability Plaintiffs and members of the
27 Disability Subclass “the enjoyment of any right, privilege,
28

1 advantage, or opportunity enjoyed by others receiving the aid,
2 benefit, or service.” 6 C.F.R. § 15.30(b)(1)(vi).

- 3 f. Using “criteria or methods of administration,” “directly or
4 through contractual or other arrangements,” “the purpose or
5 effect of which” is to subject the Disability Plaintiffs and
6 members of the Disability Subclass to “discrimination on the
7 basis of disability.” 6 C.F.R. § 15.30(b)(4), (b)(4)(i).
- 8 g. Using “criteria or methods of administration,” “directly or
9 through contractual or other arrangements,” “the purpose or
10 effect of which” is to “[d]efeat or substantially impair
11 accomplishment of the objectives of a program or activity with
12 respect to” the Disability Plaintiffs and members of the
13 Disability Subclass. 6 C.F.R. § 15.30(b)(4)(ii).
- 14 h. Making determinations “concerning the site or location” of
15 Detention Facilities, “the purpose or effect of which” as to the
16 Disability Plaintiffs and members of the Disability Subclass is to
17 “[e]xclude individuals with disabilities from, deny them the
18 benefits of, or otherwise subject them to discrimination under
19 any program or activity conducted by the Department.” 6 C.F.R.
20 § 15.30(b)(5)(i).
- 21 i. Making determinations concerning “the site or location” of
22 Detention Facilities, “the purpose or effect of which” is to
23 “[d]efeat or substantially impair the accomplishment of the
24 objectives of a program or activity” with respect to the
25 Disability Plaintiffs and members of the Disability Subclass. 6
26 C.F.R. § 15.30(b)(5), (b)(5)(ii).
- 27 j. Using “criteria” “in the selection of procurement contractors”
28 that as to the Disability Plaintiffs and members of the Disability

Subclass “subject qualified individuals with a disability to discrimination on the basis of disability.” 6 C.F.R. § 15.30(b)(6).

- k. Failing to “administer programs and activities in the most integrated setting appropriate to the needs of” the Disability Plaintiffs and members of the Disability Subclass. 6 C.F.R. § 15.30(d).
- l. Failing to conduct an adequate self-evaluation to identify modifications to policies and practices at Detention Facilities needed to ensure the programs and services at such facilities are readily accessible to and usable by detained individuals with disabilities, and to provide opportunity for input from the disability community in this process. 6 C.F.R. § 15.10; *see generally* 6. C.F.R. § 15.1 *et seq.*
- m. Failing to conduct adequate transition planning to identify structural or other changes needed to achieve program accessibility at Detention Facilities. 6 C.F.R. § 15.50(d).

651. The Disability Plaintiffs and the Disability Subclass they represent are qualified individuals with disabilities as defined in the Rehabilitation Act.

652. Because of Defendants’ Disability Practices, and systemic policy and practice of failing to adequately monitor, oversee, and administer Detention Facilities, members of the Disability Subclass are subject to violations of Section 504, including the Disability Practices, at Detention Facilities, and these violations are continuing and recurring.

653. As a result, the Disability Plaintiffs and the members of the Disability Subclass are discriminated against, not reasonably accommodated, do not have equal access to detention center activities, programs, and services for which they are otherwise qualified, and otherwise suffer violations of Section 504 by Defendants.

654. Further, as a result of these policies and practices, the Organizational Plaintiffs have had to divert resources, and have had their missions frustrated.

655. Accordingly, Defendants have violated rights secured under the Rehabilitation Act to the Organizational Plaintiffs, the Disability Plaintiffs and the Disability Subclass.

PRAYER FOR RELIEF

656. Plaintiffs and the Class and Subclasses they represent have no adequate remedy at law to redress the wrongs alleged in this complaint. Plaintiffs and the Class and Subclasses they represent have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of defendants, as alleged herein, unless Plaintiffs and the Class and Subclasses they represent are granted the relief they request. The need for relief is critical because the rights at issue are paramount under the United States Constitution and the laws of the United States.

657. WHEREFORE, the Plaintiffs and the Class and Subclasses they represent request that this Court grant them the following relief:

- a. Declare that the suit is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2), and appoint the undersigned as Class Counsel;
- b. Declare that the conditions, acts, omissions, policies, and practices described above are in violation of the rights of Plaintiffs and the Class and Subclasses they represent under the Fifth Amendment to the United States Constitution, and the Rehabilitation Act;
- c. Permanently enjoin Defendants, their agents, employees, and officials, from subjecting Plaintiffs and the Class and Subclasses

1 to the illegal and unconstitutional conditions, acts, omissions,
2 policies, and practices set forth above;

3 d. Order Defendants and their agents, employees, and officials to
4 develop and implement, as soon as practicable, a plan to
5 eliminate the substantial risk of serious harm, discrimination,
6 and statutory violations that Plaintiffs and members of the Class
7 and Subclasses they represent suffer due to the unlawful acts,
8 omissions, conditions and practices described in this Complaint.
9 Defendants' plan shall include at a minimum taking all
10 necessary steps to ensure the following conditions at
11 immigration Detention Facilities:

- 12 i. Access: Ensure that Individual Plaintiffs and the Class
13 have timely access to healthcare;
- 14 ii. Specialty and chronic care: Ensure that Individual
15 Plaintiffs and the Class have timely access to competent
16 specialty care and care for chronic conditions;
- 17 iii. Training and qualifications: Ensure that Detention Facility
18 staff and medical providers that provide healthcare to
19 Individual Plaintiffs or the Class are adequately qualified
20 and trained to carry out their duties;
- 21 iv. Emergency care: Ensure timely and competent responses
22 to healthcare emergencies suffered by Individual
23 Plaintiffs or the Class;
- 24 v. Screening: Ensure reliable screening for medical or
25 mental health conditions of Individual Plaintiffs or the
26 Class that need treatment;
- 27 vi. Staffing: Ensure staffing that is sufficient to provide
28 Individual Plaintiffs and the Class with timely access to

- 1 qualified and competent clinicians who can provide
2 routine, urgent, emergent, and specialty healthcare;
- 3 vii. Mental health treatment: Ensure that Individual Plaintiffs
4 and the Class have timely access to necessary treatment
5 for serious mental health conditions, including
6 medication, therapy, inpatient treatment, suicide
7 prevention, and suicide watch;
- 8 viii. Medical records: Ensure that Defendants properly
9 maintain medical records of Individual Plaintiffs and the
10 Class, including by transferring medical records and
11 medications with detained individuals when they are
12 transferred to ensure continuity of care;
- 13 ix. Remote locations: Ensure that detained individuals are not
14 placed in detention facilities in locations where necessary
15 medical and mental health care are not reasonably and
16 timely available;
- 17 x. Segregation: Ensure that the Segregation Plaintiffs and
18 the Segregation Subclass are not confined in punitive
19 segregation conditions, including conditions that are
20 similar to, or worse than, those found in jails and prisons,
21 and conditions that put them at substantial risk of serious
22 physical or mental harm; are not placed in segregation
23 because they are part of a vulnerable population; are
24 properly monitored by Defendants for abuses in Detention
25 Facilities' use of segregation; and are provided procedural
26 safeguards to ensure fairness in segregation
27 determinations; and
28

1 xi. Disability: Ensure that Detention Facilities have in place
2 systems and practices so that the Disability Plaintiffs and
3 the Disability Subclass are:

- 4 1. Provided meaningful access to the programs,
5 services, and facilities of Detention Facilities;
- 6 2. Adequately screened to identify disability-related
7 needs and ensure that such needs are effectively
8 tracked throughout the entire period that members
9 of the Disability Subclass are detained by
10 Defendants;
- 11 3. Not improperly subjected to segregation;
- 12 4. Provided access to reasonable accommodations,
13 auxiliary aids, and effective communication for
14 disability-related needs in a timely manner;
- 15 5. Provided with mobility aids in a timely manner;
- 16 6. Not subjected to discrimination based on
17 Defendants' determinations concerning the site or
18 location of Detention Facilities;
- 19 7. Not subjected to discrimination based on the
20 criteria that Defendants use to select contractors to
21 operate, in whole or in part, Detention Facilities;
22 and
- 23 8. Not confined in Detention Facilities with punitive
24 conditions of confinement, including conditions
25 that are similar to, or worse than, those for persons
26 with disabilities found in jails and prisons;
- 27
- 28

- xii. Award Plaintiffs the costs of this suit, and reasonable attorneys' fees and litigation expenses;
- xiii. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future absent continuing jurisdiction; and
- xiv. Award Plaintiffs, the Class, and the Subclasses such other and further relief as the Court deems just and proper.

Dated: August 19, 2019

Respectfully Submitted,

/s/ Timothy P. Fox
 Timothy P. Fox
 Elizabeth Jordan
 CIVIL RIGHTS EDUCATION AND
 ENFORCEMENT CENTER

/s/ William F. Alderman
 William F. Alderman
 Mark Mermelstein
 Jake Routhier
 ORRICK, HERRINGTON &
 SUTCLIFFE LLP

/s/ Stuart Seaborn
 Stuart Seaborn
 Christina Brandt-Young
 Melissa Riess
 Monica Porter
 Jessica Agatstein
 DISABILITY RIGHTS
 ADVOCATES

/s/ Lisa Graybill
 Lisa Graybill
 Elissa Johnson
 Jared Davidson
 Jeremy Jong
 Maia Fleischman
 SOUTHERN POVERTY LAW
 CENTER

Attorneys for Plaintiffs